THE

Accompliſh'd Practiſer

IN THE

High Court of Chancery,

SHEWING

The Whole Method of Proceedings, according to the preſent Practice, from the Bill to the Appeal incluſive:

Containing

The Original, Power and Juriſdiction of the *Chancery*, both as a Court of Law and Equity; the Office of the *Lord Chancellor*, *Maſter of the Rolls*, and the Reſt of the *Officers*.

ALSO

The beſt Forms and Precedents of Bills, Anſwers, Pleas, Demurrers, Writs, Commiſſions, Interrogatories, Affidavits, Petitions and Orders;

Together with

A LIST of the Officers and their Fees;

Likewiſe

Other MATTERS uſeful for Practiſers.

The Fourth Edition, aſſiſted by the Help of a Manuſcript by a late learned Hand, with all the Practice enlarged under every Head, and an Addition of Precedents of all Kinds; alſo the Proceedings upon a Commiſſion of Lunacy.

By JOSEPH HARRISON *of* Lincoln's Inn, *Eſq;*

In Two Volumes.

VOL. II.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's Moſt Excellent Majeſty; for T. Waller, at the *Crown* and *Mitre* oppoſite *Fetter lane* in *Fleet-ſtreet*. MDCCLVII.

4 e

S UR 942 HAR

Tx
H 318
ed4

Rec Dec. 29, 1899.

THE PRACTICE OF THE Court of Chancery.

CHAP. I.

Of interrogatories, and commiſſions to examine.

INterrogatories are queſtions exhibited in writing by the party, plaintiff, or defendant, or directed by the court, to be propoſed to and aſked of the witneſſes in a cauſe touching the merits thereof, or ſome incident therein. Alſo interrogatories are touching contempts of writs, proceſſes and orders of court, whereupon the party offending is to be examined concerning ſuch contempt, *&c.*

As on hearings upon bill and anſwer, no evidence is to be admitted (except matters of record) but what ariſes from the bill and anſwer itſelf; ſo when the parties proceed to the examination of witneſſes, the cauſe is determined by ſuch evidence as ariſes from the depoſitions of witneſſes examined upon interrogatories. And both the plaintiff and

defendant may ordinarily exhibit interrogatories; for when parties are at iſſue, it is neceſſary to conſider, as well what the other ſide may examine unto, as what ourſelves can prove, and ſo counter or croſs interrogatories may be prepared, if there be occaſion.

Where interrogatories are exhibited in the examiner's office, and witneſſes examined thereon, either party may, without application to the court, or order for that purpoſe, exhibit one or more interrogatories, or a new ſet of interrogatories, for further examination of the ſame or other witneſſes; but where the commiſſion is taken out for examination, there no new interrogatories, or ſet of interrogatories, can be exhibited without motion or order of the court. And the reaſon of the difference was ſaid to be, becauſe the examiner is an officer of credit and ſworn, and ſo preſumed to be impartial, and that he will not diſcloſe the depoſitions to either party; but the commiſſioners are private perſons, and not ſworn, and are called the plaintiff's commiſſioners or defendant's commiſſioners; and ſo without leave of the court no new interrogatories can be added before them. *Gilb.* 42.

But this practice is altered by an order made 8 *Geo.* 1. which enacts, That all commiſſioners and their clerks, before they act in the commiſſion, ſhall ſeverally take an oath not to publiſh or diſcloſe the contents of the depoſitions to be taken; which oath is to be annexed in a ſchedule to the commiſſion; and alſo in all commiſſions which ſhall iſſue to examine witneſſes, a clauſe to that effect is to be added, and made part thereof; and any commiſſioner or clerk acting contrary to the premiſſes, on proof of the offence ſhall be puniſhed as the court ſhall think fit to adjudge and order.

When the parties have copies of the depoſitions delivered to them, and come to ſee the interroga-

tories exhibited by each ſide, and find the interrogatories to be too leading or impertinent, then is a proper time to refer them to a Maſter for being too leading, impertinent or ſcandalous. This is done by motion or petition of courſe. If the Maſter reports the interrogatories leading, and this report is not excepted to, then all the depoſitions taken to theſe interrogatories muſt ſtand ſuppreſſed as of courſe by motion or petition: But if the report is excepted to, as on the one hand the court never countenances leading or impertinent interrogatories, ſo on the other hand they are not over curious in theſe matters, becauſe it may fall out, that interrogatories may be reported illegal in the very vital of the examination and on the very point the cauſe turns; and when this comes to be the caſe, the party who refers them gains his end; for perhaps he had a very bad cauſe if the depoſitions had ſtood; whereas if they are ſuppreſſed he has a very good one, ſince his adverſary muſt hear the cauſe without any proof at all; unleſs the court is pleaſed to grant him another commiſſion on payment of coſts for his leading interrogatories; which is ſeldom or never done after depoſitions are publiſhed. And it is hard, that in equity a man ſhould be deprived of a plain right through the ſlip of another man's pen, or the inadvertency or unſkilfulneſs of his counſel penning his interrogatories; and therefore if it is poſſible for the court to help him they will, from the manifeſt inconvenience which muſt attend ſuch a caſe. Indeed, if interrogatories are reported leading in points upon which the giſt of the caſe does not turn, and, if the depoſitions in theſe parts ſhould be ſuppreſſed, the party might have evidence left without it, there is no hurt done; but if the life and quinteſſence of the cauſe turns upon it, he ought to ſtruggle to the laſt before his depoſitions are ſuppreſſed.

N. B. *New* interrogatories *were ordered to be exhibited on ſuppreſſing the old.* In this caſe the interrogatories, and the depoſitions of witneſſes taken on them, had been ſuppreſſed, for that the interrogatories were leading, and then publication paſſed. And now the court was moved, that a new ſet of interrogatories might be drawn and ſettled by the Maſter, for the examination of this witneſs, whoſe evidence was very material, and yet muſt be wholly loſt, if the court would not indulge them this way; and though the practice has been always againſt it, and it was inſiſted to be of dangerous conſequence; yet one precedent being produced to this purpoſe, and the interrogatories which had been ſuppreſſed were ſuch as might have been drawn by many other counſel, without any apprehenſion of their being leading; the court to let in the party to the benefit of this witneſs's teſtimony, ordered new interrogatories to be ſettled by a Maſter, and put in for his examination over again. *Spence* verſus *Allen*, *Gilb.* 150. *Abr. Eq. Ca.* 232. S. C.

All interrogatories muſt be drawn, or peruſed and ſigned by counſel; and they are to be ſhort and pertinent, and neceſſary to the point: They muſt not be leading, as, *Did you not do, or ſee ſuch a thing?* &c. If they are ſuch, the depoſitions taken thereon will be ſuppreſſed; and ſo it is where the interrogatories are too particular, or point to one ſide of the queſtion more than the other.

They muſt be ingroſſed on parchment with double 12*d.* ſtamps, and are to be exhibited before any witneſſes examined on either ſide: And if witneſſes are to be examined before an examiner of the court, the interrogatories muſt be produced before, and left with him at the office: If in the country on a commiſſion, the interrogatories may be

be exhibited before the commiſſioners on opening the commiſſion, which is now the general practice. Though it is ſaid that heretofore the interrogatories were always included in the commiſſion. *Vide Ord. Chanc.* 216, 217.

When witneſſes are examined in court upon a ſchedule of interrogatories, there ſhall be no new interrogatories put in to examine the ſame witneſſes: But new interrogatories, by leave of the court, may be exhibited in court for examining new witneſſes at any time before publication, notwithſtanding there has been a joint commiſſion executed in the country. And on a *ſupplemental bill*, the court will, upon motion, give leave to add to the firſt interrogatories, ſo as the new interrogatories contain nothing but what relates to the ſupplemental matter. *Ord. Chan.* 126.

No re-examination of witneſſes is allowed, tho' upon the ſame interrogatories, without leave of the court: But if either party have a commiſſion *de nova*, after he hath examined on a former, he muſt examine on the ſame interrogatories as were exhibited by him on the former commiſſion; and no other interrogatories can be admitted without an order, or conſent of parties.

If leave is given to examine a witneſs after publication, and before hearing, a Maſter is commonly ordered to ſettle the interrogatories, and that they may be to ſuch points only as were omitted before, and as are now ordered to be examined unto; unleſs it be merely to prove an exhibit, and the interrogatory was before filed.

And all interrogatories for proving particular points needful upon a reference to a Maſter, ſhall be directed by the Maſter, and ſhall be to ſuch points only.

And though, by the orders of the court, the parties are to make their full proof before publi-

cation and hearing of the cauſe; yet after hearing, if there be a reference to a Maſter for the ſtating an account, or ſuch like matter, and he ſhall find any particular points and circumſtances needful to ground his report upon, which are not fully proved, nor could properly be examined to before the hearing of the cauſe, he may direct the parties to draw interrogatories to ſuch points or circumſtances only; and ſuch witneſſes are uſually examined before ſuch Maſter upon ſuch interrogatories, if the witneſſes be or reſide within ten miles of *London*; but if farther off, and the parties deſire it, he may by his certificate direct a commiſſion into the country, which is to be made out by the plaintiff or defendant's clerk that deſire ſuch commiſſion: And on the return of ſuch commiſſion, publication ſhall forthwith paſs according to the courſe of the court, *Vide Ord. Chan.* 156.

But the more common way now is, not to examine to a matter of account before hearing, but after, before a Maſter, if the witneſſes be in town or near; if not, then by commiſſion to be directed by the Maſter upon his certificate: And either party may examine witneſſes to an account, or to a particular thing, after hearing.

In caſe of a proſecution of a contempt for breach of an order of court, or otherwiſe grounded upon an affidavit, the interrogatories ſhall not be extended to any other matter than what is comprehended in the ſaid affidavit or order. And if any other ſhall be exhibited, the party examined may for that reaſon demur unto them, or refuſe to anſwer them.

Commiſſion to examine. (a)

THIS writ is either to examine the parties, or witneſſes; or others, as contemners, *&c.*

A commiſſion to examine witneſſes is ſometimes to examine them to the cauſe, *i. e.* as to the merits thereof, or to ſome particular point in queſtion; or it may be to examine them touching a contempt, or the breach of ſome order of court, *&c.* Examination to the cauſe is generally before hearing, tho' ſometimes it may be after hearing, as upon an account referred to a Maſter, or upon new matters ariſing at the hearing.

A commiſſion is alſo often had to examine witneſſes *in perpetuam rei memoriam*, touching which ſee hereafter: *p.* And alſo *vide ante* Bills.

At other times it is to examine witneſſes beyond ſea, and then if they be foreigners, or natives, to examine them on their oaths, and the oaths of ſkilful interpreters.

And when each commiſſion is executed, one of the commiſſioners, or perſon that received it from one or more of the commiſſioners, muſt deliver the commiſſion executed into the Maſter's publick office here in *England*, and make the uſual oath, *that he received it from the hands of one or more of the commiſſioners, and that the ſame hath not been open'd, nor alter'd ſince he ſo receiv'd it.* But if one of the commiſſioners brings over ſuch commiſſion, he need make no oath, but the plaintiff or defendant's clerk in court only indorſes the day, month, and year, on ſuch commiſſion, and underneath writes, *By the hands of* A. B. *one of the commiſſioners.*

Though a cauſe be only matter of account, which may be, and generally is, examined to after hearing; yet where a defendant deſires a commiſſion

(a) The courſe of the court is, that where an account muſt *neceſſarily* be directed at the hearing, a commiſſion ſhall not be granted before the hearing to examine witneſſes beyond ſea when it will delay the account directed; and the proper time to apply for ſuch commiſſion is, after the account directed.--It was refuſed though the party conſented to go to hearing at the ſame time as if the commiſſion had not been granted. Barn. 193.

miſſion before hearing, the court always grants it, as being what he has a right unto.

And though this commiſſion to examine witneſſes is not ordinarily to be granted till the cauſe be at iſſue; yet if a witneſs be very aged or ſick, upon making an affidavit thereof, the court will ſometimes order it *de bene eſſe* even before anſwer.

After you have joined and ſtruck commiſſioners names with the defendant's clerk in court, you proceed to make out a joint commiſſion to examine; but if the defendant's clerk in court fails to join and ſtrike commiſſioners names, being ſerved with an order and *ſubpæna* to rejoin, for that purpoſe, you may then make out a commiſſion *ex parte*, directed to your own commiſſioners; in which caſe no notice of its execution need be given to the other ſide.

But if the defendant rejoins *gratis*, or the parties go to commiſſion by conſent, there needs no *ſubpæna* to rejoin.

The firſt taking out and carriage of the commiſſion is regularly the privilege of the plaintiff; but the court will ſometimes indulge the defendant with a *duplicate*, becauſe in caſe the plaintiff refuſes to give notice of the executing thereof, and does not intend to execute it; then the defendant may make uſe of his *duplicate*, and proceed to examine witneſſes by virtue thereof: And this *duplicate* is the rather granted if it is doubtful whether the plaintiff will execute his commiſſion or not; and more eſpecially if he be forced on by the defendant, as in an injunction cauſe, where delay is only deſigned: And ſometimes this duplicate is granted by conſent.

If the witneſſes for the defendant live far diſtant from the plaintiff's, as ſixty or eighty miles, or beyond the ſeas, where the plaintiff hath none; in this caſe the defendant may have a commiſſion for examining

examining his witneſſes only, and have the carriage thereof: But the plaintiff may join in ſuch commiſſion, and croſs examine the defendant's witneſſes on the plaintiff's interrogatories, or examine what other witneſſes he pleaſes on ſuch commiſſion.

If when a cauſe is at iſſue, the plaintiff will not go on to commiſſion, the defendant may by order have a commiſſion to examine his own witneſſes, and ſhall have the carriage thereof. And ſo if the plaintiff commit any abuſe in the execution of the firſt commiſſion, the defendant ſhall have the carriage of the ſecond.

Alſo where a commiſſion loſt, by the fault of him who had the carriage of it, is renewed, the other ſide ſometimes hath the carriage of it.

Obſerve, That the examiners have a right to examine all witneſſes in town, or within ten miles of the town, which is the circuit of the court; and if any commiſſion be made, or witneſſes examined within that diſtrict, the depoſitions taken by commiſſion will, upon complaint, be ſuppreſſed, and the clerk who made out the commiſſion will ſtand committed for a miſbehaviour and a breach of the known duty of his office.

No commiſſion can be executed in Term time, unleſs by leave of the court, or by conſent.

All commiſſions for examination of witneſſes are to be made returnable on one of the returns in or before the Term, unleſs where the parties agree to have it *without delay*, or an order is obtained for that purpoſe.

He who has the carriage of the commiſſion muſt give fourteen days notice under his commiſſioners hands of the time and place for executing the commiſſion; and ſuch notice muſt be given to all the defendants, who join in ſuch commiſſion; otherwiſe it is not good notice, and the depoſitions may be ſuppreſſed for irregularity. But perſonal notice

is

is not neceſſary: And in default of notice the court will grant the other ſide a new commiſſion, or in caſe of the plaintiff's refuſing to give notice, the defendant having a duplicate may uſe it. And if notice is directed to be given to a perſon you cannot find, then on affidavit thereof and filing it, you may on motion or petition obtain an order for a Maſter to appoint time and place.

If two of the plaintiff's commiſſioners attend at the time and place appointed, they may proceed therein *ex parte*, though the defendant's commiſſioners fail to attend; but if the defendant's commiſſioners attend, and not the plaintiff's, they cannot go on; becauſe the plaintiff, having the carriage of the commiſſion, will not produce it, if he is diſappointed of his commiſſioners; which makes a duplicate thereof more neceſſary, for then the defendant's commiſſioners may proceed in executing the duplicate.

But where no duplicate is, but defendant's commiſſioners attend at the time and place appointed, and not the plaintiff's, the defendant is to have coſts, occaſioned by the defendant's commiſſioners and witneſſes attending at the place appointed; and the court will permit him to ſue out another commiſſion, and order him the carriage thereof.

Where one commiſſioner met on each ſide, and the plaintiff's commiſſioner went away without doing any thing, whereby the commiſſion was loſt, the court ordered the plaintiff to pay the defendant his coſts, and granted a new commiſſion, and the defendant the carriage thereof; for one commiſſioner on a ſide is ſufficient, and one at leaſt on each ſide muſt attend.

The commiſſion being opened and read, both parties are then obliged to exhibit their interrogatories, if they intend to examine any witneſſes: And the interrogatories on both ſides are to be

ſigned

ſigned by all the commiſſioners then preſent; and conſequently if the plaintiff exhibits his interrogatories, and the defendant neglects to exhibit any, and his commiſſioners attend the execution of the commiſſion, whereby they have an opportunity of ſeeing and hearing every thing that is proved on the plaintiff's part, and yet perhaps all this while they have exhibited no interrogatories; and after all this it oftens falls out, that the defendant moves the court for a new commiſſion, upon ſuggeſtion that he had no opportunity of examining his witneſſes at the laſt commiſſion; and if it ſhall appear by affidavit or certificate of the plaintiff's commiſſioners, that the defendant's commiſſioners attended during the whole time of the execution of the commiſſion, and never exhibited any interrogatories; in this caſe the court will, but very rarely, and that upon ſpecial circumſtances, grant the defendant another commiſſion. *Vide 1 Chan. Ca.* 274. But if he has put in interrogatories, and his commiſſioners attend without examining any witneſſes, the court may grant or deny him another commiſſion, as the circumſtances on the affidavit of the commiſſioners ſhall appear; his commiſſioners ought to withdraw, and care muſt be taken, if new commiſſion is granted, that neither party add to, nor alter their interrogatories: They muſt examine to the old interrogatories exhibited at the former commiſſion, and are not to add new ones without the ſpecial leave of the court; and then they are to be ſettled by the Maſter, and are never ſuffered but in extraordinary caſes, and the party praying this commiſſion muſt pay all the charges thereof, unleſs the other ſide examines any witneſſes of his own; in which caſe he is to bear the part of the charge.

If notice be given of executing the commiſſion, and at the day appointed the commiſſion is opened,

but nothing done thereupon, nor any adjournment made, the commiſſion is loſt, except the other ſide agree to adjourn, or to take new notice: But if the commiſſion be not opened, and he who has the carriage thereof gives new notice, and then executes it, this is a ſufficient execution, unleſs in the mean while the other ſide obtain and ſerve an order to ſtay proceedings till the coſts of the former attendance of the defendant's commiſſioners and his witneſſes be paid, and that they are not paid.

It is uſual, when an adjournment is made, to make a memorandum thereof, which the commiſſioners are to ſign.

If by default of him that has the carriage of the commiſſion nothing is done thereon, he ſhall bear the charges the other ſide is put to about it, either for fees of court, bringing or retaining commiſſioners or witneſſes, or otherwiſe, to be aſcertained by the oath of the party, or him that diſburſed the money for him, and ſhall renew the commiſſion at his own coſts. *Ord. Chan.* 132.

Where a commiſſion is loſt by the fault of him who had the carriage of it, and is renewed, the other ſide commonly hath the carriage of it.

And if a commiſſion become void by the error of the clerk in making it, the coſts, I think, ſhall generally be born by him and that ſide for whom it was taken out, and who had the carriage of it.

After due notice has been given, if the one ſide produces and examines all his witneſſes, and the other ſide does not, but prays a new commiſſion; if it be granted, he that prays it ſhall bear all the charges of ſuch renewed commiſſion, both in the court and in the country, and as well for the other's commiſſioners as his own; and the other ſide ſhall be permitted to croſs examine the witneſſes produced by him that renews the commiſſion. But if the other ſide will examine any witneſſes of his own,

then

then he ſhall bear his own part of the charge. The charges abovementioned to be aſcertained by the oath of the party, or of him who diſburſed the money for him. *Ord. Chan.* 132.

He, at whoſe inſtance a commiſſion is renewed after a former commiſſion executed and returned, and he by the default of whom, or of whoſe commiſſioners, a former commiſſion was not executed, and it is thereupon renewed, ſhall at his peril examine all his witneſſes on that renewed commiſſion, or ſhall examine them in court by the end of the Term it is returnable, without any more or further delay. *Ord. Chan.* 133.

Proceed we now to inſtance ſome particular caſes proper to be taken notice of under this head.

After the defendant has been examined on interrogatories, and publication paſſed, the plaintiff ought not to have a commiſſion to examine witneſſes in order to falſify the defendant's examination; this tending to multiply cauſes, and to make them endleſs. 3 *Will. Rep.* 413. *Smith* v. *Turner.*

If a defendant is to perfect his anſwer upon interrogatories, or to be examined for a contempt, although the rule of court be, that he ſhall be examined in four days, or ſtand committed; yet if the party be in the country, he ſhall have a commiſſion to take his examination. 1 *Vern.* 187.

A new commiſſion will be granted, if exhibits or writings are alter'd or interlin'd. *Hill.* 25 *Car.* 2. *Richardſon* and *Lowther*, 1 *Chan. Ca.* 273.

But where a witneſs alledged that he had miſtaken himſelf at a commiſſion; the commiſſion being returned, he came to *London*, and made an affidavit that he was ſurprized; upon which a ſpecial commiſſion iſſued to re-examine the witneſſes, which was done accordingly: But this ſpecial commiſſion was ſuppreſſed by motion, by advice of the Maſter of the Rolls with the Six clerks, as

contrary

contrary to the (a) courſe of the court. *Randal* againſt *Richford*, 1 *Chan. Ca.* 25. *Eq. Ab.* 102. (*A.*) *c.* 3. *Nel. C. R.* 92. S. C.

(a) But the preſent practice is, to obtain an order, on motion and affidavit of ſurprize, to have the witneſſes examined *viva voce* in court, or his depoſitions amended, the witneſſes being firſt examined before an examiner; but when he is examined in court, or when his depoſitions are read, the order for that purpoſe muſt be produced in court.

If after publication any new matter ariſes upon debate, or hearing the cauſe, which may be thought material by the court, a new commiſſion may be granted. 2 *Chan. Ca.* 75.

A commiſſion may be had to examine witneſſes beyond ſea; and if foreigners, to examine them upon their oaths, and alſo the oaths of ſkilful interpreters. In this caſe, when it is apprehended the returning by a commiſſioner, or by ſome perſon that can make affidavit of the true keeping of it, will be too great delay, the court ſometimes has ordered that a commiſſion be delivered by a Maſter to ſend by the poſt, and that he receive the ſame back when it is executed, by the poſt, if it be returned; otherwiſe one of the commiſſioners perſonally delivers the commiſſion to the perſon that brings it to *England*, to the intent that when arrived here, he may take the uſual oath, *viz.* That he had it from the hands of one of the commiſſioners, and that the ſame has not been opened or altered.

A general affidavit of having material witneſſes beyond ſea, is not ſufficient for a new commiſſion; but the witneſſes muſt be named in the affidavit, and the point mentioned to which they can materially depoſe. 1 *Vern.* 334.

The ground for granting a commiſſion beyond ſea to examine witneſſes, muſt depend upon the ſpecial circumſtances of the caſe.

Where there ſhall be ſaid to be ſufficient circumſtances ariſing from the nature of the caſe, upon

which a commiſſion for examining witneſſes beyond ſea ought to be granted, *vide Barnard.* 193, 194.

If commiſſioners miſbehave themſelves, the court will grant an attachment againſt them; but regularly a commiſſion cannot be ſuppreſſed, but upon a reference and certificate of irregularity. *Cary* 43.

If commiſſioners miſbehave themſelves, or if the commiſſion is executed contrary to notice, or not due notice given, or the depoſitions returned are ſo badly ingroſſed, or interlined, that they are not legible; in this and many other caſes of the like nature there may be good reaſon to ſuppreſs the depoſitions; but in this laſt caſe the record or ingroſſment of the depoſitions is brought into court by the proper officer, and the court takes the ingroſſment into their hands; and if it is poſſible to be read, or if being handed down to the clerk he can read it, they will hardly ſuppreſs the depoſitions, and put the party to new trouble of examining over again.

A commiſſioner may be examined as a witneſs; but then he muſt be firſt examined; and if others be examined before him in his preſence, he cannot be examined afterwards, having heard the former depoſitions; and for that reaſon a commiſſioner was examined in court, his former depoſition being ſuppreſſed. 2 *Chan. Ca.* 79. But after he is examined, he may then join, and proceed in executing the commiſſion.

When a commiſſion is returnable *without delay*, if it be within this kingdom, [if made out in the Vacation-time at any of the ſeals after the Term] it muſt be returned by the ſecond return of the next Term; if executed afterwards, it is void, and the depoſitions ought to be ſuppreſſed. 2 *Vern.* 197.

But

But obſerve, that if a commiſſion be made out the firſt or ſecond ſeal before the Term, or the firſt day of Term, returnable without delay, the ſame return holds good to the end of that Term.

A commiſſion to examine witneſſes.

GEORGE the ſecond, *&c.* To ——— greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by theſe preſents do give unto you, any three or two of you, full power and authority, diligently to examine all witneſſes whatſoever upon certain interrogatories to be exhibited to you, as well on the part of *A. B.* complainant, as on the part of *C. D.* defendant, or of either of them; and therefore we command you, any three or two of you, that at certain days and places to be appointed by you for that purpoſe, you do cauſe the ſaid witneſſes to come before you, and then and there examine each of them apart upon the ſaid interrogatories, on their reſpective corporal oaths firſt taken before you, any three or two of you, upon the Holy Evangeliſts, and that you do take ſuch their examinations, and reduce them into writing on parchment; and when you ſhall have ſo taken them, you are to ſend the ſame to us in our *Chancery* ——— whereſoever it ſhall then be, cloſed up and under your ſeals, or the ſeals of three or two of you, diſtinctly and plainly ſet, together with the ſaid interrogatories, and this writ. And we further command you, and every of you, that before you act in or be preſent at the ſwearing or examining any witneſs or witneſſes, you do ſeverally take the oath firſt ſpecified in the ſchedule hereto annexed; and we do give you, any three, two, or one of you, full power and authority, jointly or ſeverally, to adminiſter ſuch oath to the reſt,

reſt, or any other of you, upon the Holy Evangeliſts. And we further command, that all and every the clerk or clerks, employed in taking, writing, tranſcribing or ingroſſing the depoſition or depoſitions of witneſſes to be examined by virtue of theſe preſents, ſhall before he or they be permitted to act as clerk or clerks, as aforeſaid, or be preſent at ſuch examination, ſeverally take the oath laſt ſpecified in the ſaid ſchedule annexed: And we alſo give you, or any one of you, full power and authority, jointly and ſeparately to adminiſter ſuch oath to ſuch clerk or clerks upon the Holy Evangeliſts. Witneſs ourſelf at *Weſtminſter*, the —— day of —— in the —— year of our reign.

Here put the ſurnames of the Maſter of the Rolls, and the Six clerk. Indorſe on the back of the writ towards the top, *By order of court.*

The oaths annexed to the ſaid commiſſion are on unſtamp'd parchment; but the commiſſion has a treble ſix-penny ſtamp.

The commiſſioner's oath.

YOU ſhall, according to the beſt of your ſkill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cauſe, take the examinations and depoſitions of all and every witneſs and witneſſes produced and examined by virtue of the commiſſion hereunto annexed, upon the interrogatories now produced, and left with you. And you ſhall not publiſh, diſcloſe or make known, to any perſon or perſons whatſoever, except to the clerk or clerks by you employed and ſworn to ſecrecy in the execution of this commiſſion, the contents of all or any of the depoſitions of the witneſſes, or any of

them, to be taken by you and the other commiſſioners in the ſaid commiſſion named, or any of them, by virtue of the ſaid commiſſion, until publication ſhall paſs by rule or order of the high court of *Chancery*.——*So help you God.*

The clerk's oath.

YOU ſhall truly, faithfully, and without partiality to any or either of the parties in this cauſe, take and write down, tranſcribe and ingroſs the depoſitions of all and every witneſs and witneſſes produced before and examined by the commiſſioners, or any of them named in the commiſſion hereunto annexed, as far forth as you are directed and employed by the ſaid commiſſioners, or any of them, to take, write down or ingroſs the ſaid depoſitions, or any of them. And you ſhall not publiſh, diſcloſe or make known, to any perſon or perſons whatſoever, the contents of all or any of the depoſitions of the witneſſes, or any of them, to be taken, wrote down, tranſcribed or ingroſſed by you, or whereto you ſhall have recourſe, or be any ways privy, until publication ſhall paſs by rule or order of the high court of *Chancery*.——*So help you God.*

A commiſſion to examine a defendant touching a contempt.

GEORGE the ſecond, *&c.* To *A. B. C. D. E. F.* greeting: Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by theſe preſents do give unto you, any three or two of you, full power and authority, in purſuance of an order of our court of *Chancery*, bearing date the —— day of —— laſt paſt, made in a certain cauſe there depending, wherein *A. B.* is

is complainant, and *C. D.* defendant, diligently to examine the ſaid defendant upon interrogatories incloſed in theſe preſents touching a contempt ſuppoſed to be by him committed: And therefore we do command you, any three or two of you, that at a certain day and place to be appointed by you for that purpoſe, you do cauſe the ſaid defendant to come before you, and then and there examine him upon the ſaid interrogatories on his corporal oath firſt taken before you, any three or two of you, upon the Holy Evangeliſts, and that you do take ſuch examination, and reduce it into writing on parchment: And when you ſhall have ſo done, you are to ſend the ſame to us in our *Chancery*— whereſoever it ſhall then be, cloſed up and under your ſeals, or the ſeals of two or three of you, diſtinctly and plainly ſet, together with the ſaid interrogatories, and this writ. Witneſs ourſelf at *Weſtminſter*, the ——— day of —— in the —— year of our reign.

Commiſſion to take a defendant's examination on interrogatories.

GEORGE the ſecond, *&c.* To ——— greeting: Know ye, that we have given unto you, any three or two of you, full power and authority, in purſuance of an order of our court of *Chancery*, bearing date the —— day of —— made in a certain cauſe there depending, wherein *A. B.* is complainant, and *C. D.* defendant, to take the examination of the ſaid *C. D.* defendant, upon interrogatories incloſed in theſe preſents: And therefore we command you, any three or two of you, that at ſuch certain day and place, as you ſhall think fit, you go to the ſaid defendant, if he cannot conveniently come to you, and take his examination to the ſaid interrogatories, on his corporal

oath upon the Holy Evangeliſts, to be firſt adminiſtred by you, any three or two of you; the ſaid examination being diſtinctly and plainly wrote upon parchment; and when you ſhall have ſo taken the ſaid examination, you are to ſend the ſame cloſed up, under the ſeals of you, any three or two of you, together with the ſaid interrogatories, and this writ, unto us in our ſaid court of *Chancery*— whereſoever it ſhall then be. Witneſs ourſelf at *Weſtminſter*, the —— day of —— in the ——— year of our reign.

A commiſſion to examine witneſſes and divide lands.

GEORGE the ſecond, *&c.* To ——— greeting: Know ye, that we have, purſuant to an order of our court of *Chancery*, bearing date the ——— day of ——— laſt paſt, made on the hearing of a certain cauſe, wherein *S. H.* widow, and *M. H.* are plaintiffs, and Sir *W. H.* Bart. and *W. W.* Eſq; are defendants, fully authorized and impowered you, or any two or more of you, to go to, enter upon, walk over, and ſurvey the manors of *T*——— *U*———, and *E* ——— *H. R* ——— and *E*——— *H*———, in the county of ——— in the complainant's bill of complaint particularly mentioned, and the ſame to ſeparate, ſet apart, and divide into three equal parts; and to allot and appoint two third parts of the ſaid *T* ———, and *R* ——— eſtates to the plaintiff *S. H.* and the other third part thereof to the defendant *W. W.* and to allot and appoint one third part of the ſaid *H.* eſtate to the plaintiff *S. H.* another third part thereof to the plaintiff *M. H.* and the remaining third thereof to the defendant *W.* And for the better making ſuch diviſions, to examine witneſſes touching the values of the ſaid

ſeveral eſtates, upon ſuch interrogatories to be exhibited to you, as you, any two or more of you ſhall think proper, to diſcover and make out the truth of the premiſſes. Therefore we command you, any two or more of you, that you meet together at certain days and places by you for this purpoſe appointed, and from thence go to, enter upon, and walk over, and ſurvey the ſaid manors, lands and premiſſes; and that you do alſo cauſe the ſaid witneſſes to come before you, and then and there examine each of them apart, upon ſuch interrogatories, upon their reſpective corporal oaths firſt taken before you, any two or more of you, upon the Holy Evangeliſts; and that you do take ſuch their examinations and reduce them into writing on parchment: And that you, any two or more of you, do ſeparate, ſet apart, and divide the ſaid premiſſes into three equal parts, and do allot and appoint two third parts of the ſaid *T*—— and *R*—— eſtates to the plaintiff *S. H.* and the other third part thereof to the defendant *W. W.* and to allot and appoint one third part of the ſaid *H.* eſtate to the plaintiff *M. H.* and the remaining third thereof to the defendant *W.* And when you ſhall have ſo done, you, or any two or more of you, are to certify and return into our ſaid court of *Chancery*, without delay, whereſoever our ſaid court ſhall then be, your facts and proceedings in the premiſſes, by your certificate, diſtinctly and plainly wrote upon parchment, together with the ſaid examinations and interrogatories, cloſed up, and under your ſeals, or the ſeals of any two or more of you, diſtinctly and plainly ſet, together with this writ. Witneſs ourſelf at *Weſtminſter*, &c.

Commiſſion to aſſign and ſet out dower.

GEORGE, &c. To ——— greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by theſe preſents do give unto you, any three or two of you, full power and authority, in purſuance of an order of our court of *Chancery*, made in a certain cauſe there depending, wherein *A. B.* is complainant, and *C. D.* defendant, bearing date the —— day of —— laſt, to aſſign and ſet out dower for the aforeſaid complainant, out of all and ſingular the lands and tenements, being lately the eſtate of —— deceaſed, in the ſaid order mentioned, called —— And therefore we command you, any three or two of you, that you meet at a certain time and place to be appointed by you for that purpoſe, in order to come unto, inſpect and view the aforeſaid eſtate, lands and premiſſes, whereſoever they ſhall be found to be ſituate, lying or being; and according to the beſt of your ſkill and judgment, to aſſign and ſet out dower for the ſaid complainant, out of the aforeſaid *farm, lands and premiſſes*; and doing in all and ſingular the premiſſes, according to the true intent and meaning of theſe preſents and the aforeſaid order: And when you ſhall have thus done, that you tranſmit unto us in our ſaid court of *Chancery*, whereſoever it ſhall be, your certificate concerning the ſaid complainant's dower, ingroſſed on parchment, together with your other proceedings in the premiſſes, as is uſual, with this writ. Witneſs, *&c.*

Of

Of commiſſions to examine witneſſes.

NOTICE of executing a commiſſion is ſometimes ſerved on the clerk in court, if ſigned by the clerk in court; or may be ſerved upon the ſolicitor in town or country, as the parties can agree. If the parties are willing, ſhort notice may be given.

Peers of the realm, as well as others, are to give their teſtimony upon oath.

A witneſs was examined upon a commiſſion, ſwears reflecting words, yet he ought not to pay any charges, it being none of his fault, but the commiſſioners and their clerks fault to take down that part of the depoſition. 2 *Will. Rep.* 406.

A commiſſion returnable without delay muſt be executed, if within the kingdom, by the ſecond return of the next Term, elſe void, and the depoſitions to be ſuppreſſed. 2 *Vern.* 197.

There muſt be a label to all commiſſions to this effect:

> To (naming the commiſſioners) A commiſſion impowering you to examine witneſſes, as well on the part of *A. B.* complainant, as on the part of *C. D.* defendant, or either of them, returnable without delay, on fourteen days notice to the defendants.
>
> *Forteſcue. Collins.*

When the commiſſion is obtained on the part of the defendant, and the plaintiff joins therein, the words of the commiſſion and label are ——— As well on the part of *C. D.* defendant, as on the part of *A. B.* plaintiff, or either of them.

If it be an *ex parte* commiſſion, then, if obtained by the plaintiff, the words are ——— On the

part of *A. B.* complainant, againſt *C. D.* defendant, *&c.*

The plaintiff, two days before the execution of a commiſſion to examine, was arreſted by the defendant, and was in execution, but was ordered to be diſcharged, and the defendant ordered to pay coſts, and be at the charge of a new commiſſion.

Proceedings upon the execution of a commiſſion to examine witneſſes *in perpetuam rei memoriam*, are the very ſame as upon a general commiſſion.

The form of a notice of executing a commiſſion given by a clerk in court.

BY virtue of a commiſſion iſſued out of his Majeſty's high court of *Chancery*, directed to certain commiſſioners therein named, for the examination of witneſſes in a certain cauſe depending in the ſaid court, between, *&c.* This is to give you notice, that the ſaid commiſſioners intend to execute the ſaid commiſſion on *Monday* the day of next at of the clock of the ſame day, at the houſe of, *&c.* where the commiſſioners may be preſent, if they pleaſe. Dated, *&c.*

A. B.

To *D. C.* (to whom notice is agreed to be given.)

CHAP.

CHAP. II.

Of examination of witneſſes, evidence, witneſſes, and proofs.

WHEN the commiſſioners have received the commiſſion, they muſt give notice in writing, to the other ſide, of the time and place of executing it, in the following form, *viz.*

Notice of executing a commiſſion.

WHEREAS we have received a commiſſion iſſuing out of his Majeſty's high court of *Chancery*, to us, and, *&c.* directed for the examination of witneſſes in a cauſe there depending, between *A. B.* plaintiff, and *C. D.* defendant: Theſe are to give you notice, that we will execute the ſaid commiſſion on the behalf of the plaintiff, at the houſe of, *&c.* known by the ſign of, *&c.* ſituate in, *&c.* in the county of —— on —— being the —— day of —— next enſuing, at the hour of —— o'clock in the forenoon of the ſame day, when and where you, and your commiſſioners and witneſſes concerned may be preſent, if you pleaſe. Given under our hands, this —— day of, *&c.*

To Mr. C. D. *E. F.*
G. H.

This notice is to be delivered to the party, or left at his houſe with his wife, or ſervant, * fourteen days before the time of executing the commiſſion, as has been before obſerved, (except a ſhorter time be appointed by order of court, which very ſeldom is done) or the depoſitions ſhall be ſuppreſſed.

* But where it is a ſhort Vacation, as between *Eaſter* and *Trinity* Term, *ten* days, or *leſs*, is good notice.

preſſed. And the witneſſes are alſo to be ſerved with a ſummons to appear before the commiſſioners at the time and place, to depoſe their knowledge to each interrogatory; which ſummons is in this form:

A ſummons for witneſſes to appear before the commiſſioners to be examined.

Between *A. B.* plaintiff,
C. D. defendant.

In Chancery.

WHEREAS we have received a commiſſion iſſuing out of his Majeſty's high court of *Chancery*, &c. (*ut ſupra*) And whereas we are informed, That you, whoſe names are here underwritten, are material witneſſes for the plaintiff (or defendant) in this cauſe: Theſe are therefore, by virtue of the ſaid commiſſion, to will and require you, and every of you, perſonally to be and appear before us, or any three or two of the ſaid commiſſioners, at the houſe of, *&c.* known, *&c.* in, *&c.* on the ——— day of ——— next, then and there to be examined, and to teſtify your knowledge for and on behalf of the plaintiff (or defendant); and you are then and there to attend, and not to depart until you have been examined on the part of the ſaid plaintiff: And herein you are not to fail. Given under our hands, *&c.*

To *N. M. P. R. S. T.* *E. F.*
W. E. &c. *G. H.*

But if a witneſs be *unwilling* to come, you muſt get a *ſubpœna ad teſtificandum* ſealed, and ſerve him therewith, and deliver him one ſhilling with the *ſubpœna*, and at the ſame time the commiſſioners ſummons,

ſummons, as before; and if the witneſs ſo ſummoned and ſerved does not appear, the court will grant an attachment againſt him, unleſs he comes up at his own expence to be examined before the examiner; or if he be ſummoned by the commiſſioners without a *ſubpœna ad teſtificandum*, and do not appear, the court will order ſuch witneſs to attend at his own expence, and to be examined; and if he diſobey ſuch order, then an attachment ſhall go againſt him.

The commiſſioners and witneſſes being met together, at the time and place appointed, according to the notice; the commiſſion (which till that time muſt remain ſealed) may be opened, that the commiſſioners may ſee their authority; and then they are to adminiſter the *oath* to each other, and alſo the *oath* to the clerks, annexed to the commiſſion, as aforeſaid.

After the oaths are adminiſtred, the commiſſioners and their clerks begin to execute the commiſſion; and having before them the interrogatories both for the plaintiffs and defendants, the commiſſioners preſent muſt ſign their names at the bottom of both the interrogatories; and then one of the commiſſioners, or clerks, draws up the ſtile or title of the depoſitions, preparatory to the examination of the witneſſes, in paper, uſually thus:

On the behalf of the plaintiff. *Depoſitions of witneſſes produced, ſworn, and examined on the ——— day of ——— in the ——— year of the reign of his Majeſty King* George *the ſecond, and in the year of our Lord* 1744. *at the houſe of* A. B. *known by the ſign of the ——— ſituate in the pariſh of* C. *in the county of* D. *by virtue of a commiſſion iſſuing out of his Majeſty's*

Majeſty's high court of Chancery, *to us* E. F. G. H. J. K. *and* L. M. *directed, for the examination of witneſſes in a cauſe there depending between* A. B. *plaintiff, and* C. D. *defendant, on the part and behalf of the plaintiff: We the ſaid commiſſioners, alſo the reſpective clerks by us employed for taking and ingroſſing the ſaid depoſitions, having firſt taken the oaths annexed to the ſaid commiſſion as thereby required.*

Then the commiſſioners call a witneſs before them, and cauſe all perſons, but themſelves and their clerks, and that witneſs that is to be examined, to leave the room, and then they adminiſter to the witneſs his oath.

One of the commiſſioners taking the interrogatories, and producing them to the witneſs that is to be examined thereto, adminiſters the oath to ſuch witneſs, as followeth: The commiſſioners may read the title of the interrogatories to ſuch witneſs, and then ſay, *You are true anſwer to make to all ſuch queſtions as ſhall be asked you upon theſe interrogatories, without favour or affection to either party, and therein you ſhall ſpeak the truth, the whole truth, and nothing but the truth.*

So help you God.

The oath being adminiſtred, the witneſs's name and place of abode, addition and age, are to be writ in the ſame paper, under the title *Of the depoſitions*, &c. And the commiſſioners muſt themſelves examine the witneſſes on the interrogatories, and not leave it to their clerks; wherein they are to examine but to one interrogatory at a time, and ſhall not read to the witneſſes another interrogatory till they have gone through and anſwered the former:

former: And the commiſſioners ſhall likewiſe take down what comes from the witneſſes on their examination, and not permit them on their own reading of the interrogatories to ſet it down themſelves; but the depoſitions muſt be carefully read over to ſuch witneſs, and if upon ſuch reading any thing is miſtaken that the witneſs cannot ſwear to, after he has been examined, the depoſitions muſt be rectified; which done, the witneſs muſt ſign his name or mark to ſuch depoſitions as he is examined to. A witneſs may be allowed to uſe ſhort notes which he brings with him to help his memory; though not the ſubſtance of the depoſitions, nor may he tranſcribe *verbatim* ſuch notes. And the commiſſioners ought not to aſk any *idle* queſtions, or ſuch as are foreign to the interrogatories, nor ſet down impertinent anſwers, but only what are material on the points interrogated.

If any practiſer, or other perſon, goes about to tamper with, or ſuborn any witneſs, upon complaint made thereof, and upon examination of the matter upon oath, he muſt ſtand committed.

The names and additions of the witneſſes, *&c.* and their depoſitions or anſwers, are thus put down:

A. B. *of* —— *in the county of* —— *gent. aged* —— *years and upwards, being produced, ſworn and examined on the behalf of the plaintiff (or defendant) depoſeth as followeth:*

Imprimis, *To the firſt interrogatory this deponent ſaith, That*, &c.

Item, *To the ſecond interrogatory this deponent ſaith*, &c.

And ſo proceed through the reſt of the interrogatories.

If

If a commiſſion be adjourned to another day and place, and witneſſes are examined, the time and place where ſuch examinations were taken, ought to be mentioned and ſet down in the title of the reſpective depoſitions.

If there be any writings directed by the commiſſion to be proved, the commiſſioners are to give directions to bring them in for that purpoſe; and after they are proved, exhibits may be made of them.

And the exhibits muſt be indorſed after the following manner:

Between A. B. *plaintiff, and* C. D. *defendant*, Dec. 1744. *At the execution of a commiſſion for examination of witneſſes in this cauſe, this deed or parchment, or paper writing was produced and ſhewn to* E. F. *and by him depoſed unto at the time of his examination to the third interrogatory on the plaintiff's part, and was alſo produced and ſhewn unto*, &c. *and by him depoſed*, &c. *before us*,

E. F.
G. H.

When the witneſſes are examined, the depoſitions are to be ingroſſed on parchment, in like manner as the interrogatories, and examined carefully with the paper draughts; after which the commiſſioners ſign ſuch ſchedule or ſkin of parchment of the examinations, and alſo the interrogatories, and then bind them up together with the commiſſion, uſually (called making up the commiſſion) with ſome red tape or other ſtring, ſetting all their names and ſeals upon the ſame; but before the commiſſion is ſealed up, they are to indorſe upon the back of the commiſſion towards the

the middle thereof *The execution*, to which they likewiſe ſubſcribe their names, as followeth;

The execution of this commiſſion appears in a certain ſchedule (or *ſchedules*) *to this commiſſion annexed,*

E. F.
G. H.

When the commiſſion is executed and made up, the paper draught is to be alſo ſealed up as above, and delivered to one of the commiſſioners to keep; and ſometimes it is cut in two in the middle, and one part thereof is delivered to one of the plaintiff's commiſſioners to keep, and the other part is delivered to one of the defendant's commiſſioners to keep; and the commiſſioners muſt deliver the commiſſion, the label thereof hanging out at the end, perſonally to the perſon that brings it to town, who is to deliver it to a Maſter in *Chancery*, or more uſually to the clerk in court who had the carriage of the commiſſion, who indorſes the ſame thus:

23d Jan. 1740. *Upon the oath of* L. M. *Before* ———

When a perſon ſwears it, he goes before a Maſter, commonly at the *publick office*, where he makes oath, That he received the commiſſion from the hands of two or more of the commiſſioners therein named, and that it has not been opened nor altered ſince he ſo received it.

But if the commiſſion is carried by one of the commiſſioners, no oath is required; and you need only indorſe,

23d July 1744. *Received by the hands of* E. F. *one of the commiſſioners.*

The

The commiſſioners have as fees uſually a guinea a day each, and their clerks for ingroſſing, *&c.* ſuch fees as the commiſſioners commonly ſettle among themſelves, and all charges of eating, drinking and entertainment born; and the perſon that carries the commiſſion is uſually allowed five ſhillings for his trouble.

N. B. On delivery of the commiſſion, the examinations or depoſitions are not to be opened or copied, until publication is actually paſſed.

Thus much with reſpect to the *examinations* of witneſſes by *commiſſioners* in the country; let us conſider in the next place of *examining witneſſes* by *examiners in court.*

After replication either ſide, till publication is paſt, may examine what witneſſes they pleaſe in court before one of the examiners.

If a party examines ſome witneſſes in town, and others by commiſſion, he is not obliged to file his whole ſet of interrogatories in the examiner's office, but ſuch alone as he has occaſion for in town; but they muſt be the ſame as were exhibited at the commiſſion, or elſe it would be paying for copies of whole interrogatories twice over.

The examiners office is to examine on oath the witneſſes on both ſides, that are brought before them, in any cauſe, and they have a right to examine all witneſſes within ten miles of *London:* And if any commiſſion is made out, or witneſs examined in that diſtrict, ſuch depoſitions will be ſuppreſſed on complaint, and the clerk who made out the commiſſion will ſtand committed for a miſbehaviour and breach of the known duty of his office, as happened in Mr. *Snow*'s caſe to one of the clerks, where the commiſſion was executed at a tavern in *Chancery-Lane.*

Where an examiner was committed and diſcharged from his office for ſuffering the plaintiff

to

to come up into the room, and anſwer the perſon's queſtions who was examined. *Hoſier* and *Hart*, *Moſely* 321.

If the witneſſes live in town, and you have no occaſion to go to commiſſion in the country (or after you have examined ſome witneſſes in the country, and have others to examine in town) then exhibit the interrogatories in the examiner's office, and get a rule entered to produce witneſſes; and after they are examined, a rule to paſs publication.

If a witneſs is willing to be examined, and will attend without a *ſubpœna* ſerved on him, you need only to appoint a time with the examiner, who is to examine him; and then give the witneſs notice; or attend with the witneſs upon the examiner, at the time appointed, who will then examine him, after he has been ſworn to the interrogatories before a Maſter, and produced and ſhewn to the adverſe clerk in court, as hereafter.

But if a witneſs refuſes to be ſworn willingly upon interrogatories, you muſt ſerve him with a *ſubpœna*, and at the ſame time deliver him one ſhilling, and if he refuſes to come and be ſworn upon ſuch ſervice, you are to make an affidavit of ſuch ſervice of the *ſubpœna*; which being filed, you then apply to your examiner for a certificate that ſuch witneſs is not ſworn to the ſaid interrogatories: And upon that affidavit and certificate your counſel moves the court, of courſe, for an order that ſuch witneſs do in four days after perſonal ſervice attend, and be ſworn and examined to the ſaid interrogatories, or in default thereof he is to ſtand committed to the *Fleet* priſon. And ſuch witneſs being perſonally ſerved with ſuch order, and ſtill refuſing to be ſworn and examined to the interrogatories, upon affidavit being made and filed of the perſonal ſervice of the ſaid order, and the examiner's certificate of his not being ex-

amined, your counſel moves again, of courſe, and obtains another order that ſuch witneſs do ſtand committed to the priſon of the *Fleet*; which order you deliver to one of the tipſtaffs belonging to the court of *Chancery*, and he gets a warrant thereon ſigned by the Lord Chancellor, and by virtue thereof apprehends ſuch witneſs, and then carries and delivers him to the Warden of the *Fleet*, and he is to remain in cuſtody not only till he has been examined upon ſuch interrogatories, but alſo paid the plaintiff his coſts he has been put to about him, to be taxed by the Maſter, beſides the Tipſtaff's and Warden's fees for taking and detaining him.

The like method is to be taken againſt a witneſs who is ſworn to the interrogatories, and refuſes afterwards to be examined thereupon.

The witneſſes or parties to be examined, muſt be firſt ſworn before a Maſter in *Chancery*, to anſwer truly to the interrogatories; and their names who are ſworn muſt be inſerted by the examiner, or his clerk upon the interrogatories, and then before they are to be examined, they are introduced into the Six clerks office, by the examiner's clerk, and produced at the ſeat of the adverſe clerk in court, where the examiner's clerk is to leave a notice in writing of the name and place of reſidence of every ſuch witneſs. *Vide Ord. Chan.* 126. In order to prevent witneſſes from being perſonated, and to give an opportunity for croſs examination.

If interrogatories are filed for a witneſs's examination, the party who produces him is obliged to procure him to ſtay or return, and attend to be examined thereon; but if no ſuch interrogatories are filed, and he is not demanded to be croſs examined at the ſame time, when he is under examination, if he once goes about his buſineſs, the party who intends to croſs examine muſt get him examined as he can; for the adverſe party is not

in

in this caſe bound to produce him over again to attend to be croſs examined; ſince it was the party's fault he had not the interrogatories ready to have croſs examined him, whilſt he was under his former examination.

If a witneſs be examined by commiſſioners in the country, he ſhall not be examined again in court without a ſpecial order for that purpoſe.

Of examining witneſſes *de bene eſſe*, (*a*) and eſtabliſhing their teſtimony *in perpetuam rei memoriam.*

(*a*) Altho' it is an order of courſe to examine a defendant *de bene eſſe*, ſaving juſt exceptions; yet when the cauſe is heard, and it appears that ſuch defendant is a party intereſted, it is proper to ſhew cauſe againſt ſuch an order before he is examined, 2 Vern. 452.

Witneſſes are ſometimes examined *in perpetuam rei memoriam* to preſerve their teſtimony in caſe of death, *&c.* and their examinations may be taken either in court, or by commiſſion; and the method of obtaining ſuch a commiſſion, is by filing a proper bill for that purpoſe. *Vide ante.*

And after the bill is filed, the court, on affidavit made that the ſaid witneſſes are old, infirm, going beyond ſea, *&c.* ſo that the party is in danger of loſing their teſtimony, if they live in the country, will grant a commiſſion; or if they are within ten miles of *London*, will order them to be examined in court *de bene eſſe*, which will make their depoſitions valid in that cauſe only, and againſt thoſe who are parties to it; but if it appear, that they might afterwards have been examined in chief, regularly, ſuch depoſitions ſhall not be made uſe of: But if the witneſſes live till they can be examined in chief, they muſt be examined over again as other witneſſes in chief are; but if they die in the mean time, or are not returned from beyond ſea, then their depoſitions are to be publiſhed in ſuch manner as is ſhewn hereafter. And the depoſitions taken in ſuch caſes, will not only bind the parties

in that and all other ſuits, but likewiſe all thoſe claiming by or from them.

Depoſitions to be taken *de bene eſſe* ſhall not be publiſhed without affidavit of the death of the witneſs, or that he could not be examined in chief. *Sel. Ca. in Chan.* 11.

Examination *de bene eſſe* is uſed in many other bills than barely to perpetuate teſtimony: As where one man brings a bill againſt another, and hath a moſt material witneſs to examine, upon affidavit that this witneſs is in a languiſhing condition, or in danger of dying, before he can be examined in chief, or where he is going a long voyage, from whence he cannot return by the time he is to be examined in chief, and to which place he is bound, and cannot poſſibly ſtay; in either of theſe caſes, upon motion or petition, and making an affidavit of ſuch witneſs's being very old, or ſick and infirm, or going ſpeedily beyond ſea, and is a very material witneſs for the plaintiff, the court never denies to make an order to examine ſuch a witneſs *de bene eſſe*, ſaving juſt exceptions to the other ſide.

The court cannot make an order to examine a plaintiff *de bene eſſe*, ſaving juſt exceptions, tho' they will make ſuch order to examine a defendant; for the defendant ſhould have demurred to ſuch an immaterial plaintiff.—If a corporation would make one of their own Members a witneſs, they muſt *diſfranchiſe* him. 1 *Will.* 595. But no plaintiff ought to be a witneſs for another, as being liable to coſts. *Ibid.* 596.

A witneſs was ordered to be examined *de bene eſſe*, on affidavit that the thing examined into lay only in the knowledge of the witneſs, and was a matter of great importance, though no affidavit of the witneſs's being old or infirm. 3 *Will. Rep.* 77. *Shirley*, &c. v. *Earl of Ferrers.*

But

But if the party intereſted ſhew cauſe to the contrary allowed by the court, then the plaintiff is to deſiſt from examining ſuch witneſs.

If by commiſſion, he may examine *ex parte*, or the defendant may come in by appearance and join in commiſſion, if he pleaſes, and then fourteen days notice is to be given of executing the commiſſion: And the defendant may by interrogatories croſs examine ſuch witneſs, if he thinks fit.

Though the depoſitions are not ordinarily to be publiſhed while the witneſſes live, yet in ſome caſes, as by conſent of parties, or upon oath, that the plaintiff has ſome trial at law wherein he ſhall need them, and that the witneſſes are not able to travel; or for other good reaſons, the court will ſometimes (though very rarely) order publication in the life-time of the witneſſes; and then the party may exemplify the depoſitions, and they may be given in evidence in any other court, by order of this court.

If a matter is properly triable at law, as a title, and the plaintiff can have an opportunity to try it there; this kind of bill is not to be brought here till the party hath affirmed his title at law; if he ſhould, it will be diſmiſſed upon a demurrer.

Theſe depoſitions are not to be given in evidence, or made uſe of againſt any others but the defendants who were ſubpœna'd to defend the matter, or ſome claiming under them, whoſe intereſt accrued ſince the bill preferred.

When lands are deviſed by will from the heir at law, and there is no occaſion or opportunity to prove or eſtabliſh it at law, it is often neceſſary to prove ſuch will in *Chancery*, to perpetuate the teſtimony thereof; the way to do which is to exhibit the bill againſt the heir at law, and ſet forth the will *in hæc verba*. And the defendant having anſwered, they proceed to iſſue as in other caſes;

and then examine the witneſſes to the will, or prove their hands, if they are dead. The will (if witneſſes are examined in town) muſt be left in the examiner's office to be examined to; which done, and publication paſſed, the cauſe is at an end, an order, or rules, being firſt obtained for publication: And the defendant, who is the heir at law, and examines no witneſſes touching the validity of the will, may give notice of motion for the plaintiff to pay him his coſts to be taxed by a Maſter, which the court uſually orders.

Commonly where an eſtate is conſiderable, the plaintiff is at the charge of an *exemplification* of the proceedings of that cauſe.

But though this court ſuffers examinations to perpetuate the teſtimony of a will, yet it will not barely try the validity of a will; but if the ſame come collaterally in queſtion upon a bill for the performance of a truſt, or touching a deviſe out of lands, *&c.* the court generally directs an iſſue at law to try the validity thereof.

Though there be goods and chattels deviſed by the ſame will, whereby lands are deviſed; yet the proving thereof in the ſpiritual court, is of no avail in reſpect of the lands; and this court may prohibit the ſpiritual court to meddle in the proof any farther than concerns the goods or perſonal eſtate, *&c.* Where there is no occaſion or opportunity to prove and eſtabliſh it at law, it is the beſt and ſafeſt way to prove it in this court.

The proceedings on a bill to perpetuate the teſtimony of witneſſes are moſtly the ſame as others. See more on this head, 1 *Vern.* 452. 1 *Vern.* 331. *Vide* 1 *Salk. Cro. Eliz.* 352. *Hard.* 332. *Raym.* 335. *Hob.* 112. *Godb.* 336. 1 *Vern.* 105. 2 *Vern.* 159. 1 *Vern.* 185, 308, 441. 1 *Vern.* 354, *Maxims of Equity* 33.

If

If the plaintiff, to perpetuate teſtimony to a will concerning lands, exhibit a bill againſt the heir at law, ſetting forth the will, and the defendant anſwers, the plaintiff has then only to proceed to iſſue, and examine witneſſes to the will to perpetuate their teſtimony, and then the will being brought to the examiner's office (if in town) and publication paſſed, the cauſe is at an end. An order muſt be firſt obtained for publication.

This ſort of bill ought not to be brought for ſuch trivial matters as common, ways, watercourſes, *&c.* till after a recovery at law. *Vern.* 308 *&* 312.

A bill to examine *in perpet'*, *&c.* by a deviſee againſt a purchaſer without notice, ſhall not be allowed, till a will is eſtabliſhed by verdict at law. *Vern.* 354.

Neither can ſuch a bill be brought to eſtabliſh one's title, until made good by verdict at law, if he is under no impediment of trying his title at law. *Vern.* 441.

A defendant demurred to a bill to perpetuate, *&c.* whereas he ſhould not have demurred; but either aſſented by his anſwer to examine, or ſhew ſufficient cauſe why witneſſes ſhould not be examined, and left it to the conſideration of the court, whether the cauſe be ſufficient or no; and the defendant was accordingly ordered to withdraw his demurrer, and put in an anſwer; and thereby either conſent to ſuch examination, or ſhew cauſe to the contrary. *Southall* v. *Peryn*, 26 *Eliz.*

With regard to examining witneſſes *viva voce*, it is incumbent on the party who wants to examine to produce his witneſſes in court, at the hearing, having firſt obtained an order for that purpoſe, and alſo the exhibits, which are delivered together with the order to the Regiſter in court, and the court examines the witneſſes accordingly.

[For more concerning of examining witneſſes *de bene eſſe*, and eſtabliſhing their teſtimony *in perpetuam rei memoriam*, vide 2 Vol. Abr. Eq. (D) p. 417.]

Of the ſufficiency and diſability of a witneſs.

A party intereſted, by releaſing his right, may be a witneſs. 2 *Vern.* 375. *Culpeper* and *Fairfax*, S. P. 2 *Vern.* 472. *Callow* and *Minure.*

Where there is a diſpute touching money given for the benefit of pariſhioners, none of the inhabitants ought to be admitted as a witneſs. 2 *Vern.* 317.

A bankrupt by releaſing to the aſſignees, may. 2 *Vern.* 637. But whilſt he continues intereſted, he can by no means be a witneſs. 2 *Vern.* 463, 464. *Needham* and *Smith.* A legatee of a ſmall legacy, as five ſhillings to a private perſon, or five pounds to a nobleman, may be a witneſs for the will. 1 *Vern.* 254. A perſon diſintereſted when examined, becoming intereſted afterwards, yet his examination may be made uſe of, *Trin.* 1702. *Holcroft* and *Smith*, but cannot be made uſe of at law. 2 *Vern.* 699. A witneſs appearing to be intereſted, though he ſwears he hath received ſatisfaction, yet is not a competent witneſs, for the law will not ſuffer him to ſwear this, but the releaſe or other act deſtroying his intereſt muſt be proved. *MSS. Anon. Mich.* 11 *Geo.* 2. Plaintiffs cannot be examined for each other, but defendants may. 1 *Vern.* 230. 2 *Chan. Ca.* 214. *Mich.* 1715. *Caſey* and *Beachfield. Gilb.* 98. *Preced. in Chan.* 411. A commiſſioner may, but he ſhould be examined before any other witneſs. 1 *Vern.* 369. An arbitrator may. 1 *Vern.* 157, 158. Members of a corporation cannot. *Vide* 1 *Vern.* 254. 2 *Vern.* 317. A wife cannot againſt her huſband; unleſs in caſe of extreme neceſſity. *Vide* 2 *Chan. Ca.* 39. 2 *Vern.* 79.

A bankrupt's wife cannot be examined againſt her huſband *to prove his bankruptcy*; but may *touching diſcovery of his effects.* 1 Will. 611.

But the bankrupt himſelf may be examined touching his own bankruptcy, by *Stat.* 5 *Geo. Ibid.*

If an executor in truſt renounces the executor's part, and lets another take out adminiſtration with the will annexed, he may be a witneſs. 3 *Will.* 182.

[For more of the ſufficiency and diſability of a witneſs, *vide* 2 *Vol. Abr. Eq.* (A) *p.* 395.]

Note, That if a plaintiff wants to examine a defendant as a witneſs, he muſt obtain an order by motion or petition for that purpoſe, which order is of courſe, and muſt be ſerved on the adverſe clerk in court; alſo the defendant may obtain the like order to examine a co-defendant as a witneſs for him; but all theſe orders are upon ſuggeſtion, that the defendant is not concerned in point of intereſt in the matters in queſtion, and they are never granted but with a clauſe of (ſaving juſt exceptions to the other ſide); and this muſt be made at the hearing of the cauſe; and this order for examining a defendant muſt be produced at the commiſſion office, or in the examiner's, when the defendant attends to be examined, without which he cannot be examined; for it is by virtue of that order they are impowered to examine him, and they cannot do it otherwiſe. For a petition to examine a defendant, *vide* Petitions.

What ſhall be admitted as evidence, and will amount to ſufficient proof.

A bill in another cauſe is not to be read as evidence againſt the perſon named plaintiff in it, unleſs it be proved, that it was exhibited with privity. *Wollet* and *Roberts*, 1 *Chan. Ca.* 64.

When

When the depoſitions taken in a former cauſe ſhall be made uſe of, *vide* 1 *Chan. Ca.* 73. 1 *Vern.* 413. 2 *Vern.* 447. This is done by petition to the Maſter of the Rolls, or motion to the court.

That a man's anſwer in the ſpiritual court, or voluntary oath before a juſtice of the peace, may be read againſt him in *Chancery*, by order, *vide Vern.* 73.

If a man unneceſſarily makes any one a defendant, he thereby cuts himſelf off from the benefit of his evidence, for it is his own fault.

But where ſeveral are made defendants, it will not hinder any one of the defendants from the benefit of the evidence of any others that are made ſo.

Indeed in caſe of truſtees, it is neceſſary that they be made defendants, and therefore there the plaintiff may have the benefit of the evidence. *Gibſon* and *Albert*, *Lucas's Rep.* 19, 20.

But it is the ſettled practice, that one defendant's anſwer cannot be read as evidence againſt another defendant; and therefore if you want his evidence, you muſt apply by petition or motion, as before obſerved.

When copies of notices admitted as evidence, *vide Winne* and *Loyd*, 2 *Vern.* 603.

The copy of a deed inrolled for ſafe cuſtody, admitted as evidence. *Combes* and *Spencer*, 2 *Vern.* 471. 2 *Vern.* 591. S. C.

Confeſſing a matter by anſwer, ſufficient evidence. 2 *Vern.* 380. *Vide* 1 *Vern.* 452. S. P.

A ſettlement made purſuant to marriage-articles, evidence that all treaties were reſolved into that. 1 *Vern.* 369.

A purchaſer who buys in a precedent incumbrance, not obliged to prove the actual payment of the money. 2 *Vern.* 279. and *vide* 1 *Vern.*

An injured party's oath good *in odium ſpoliatoris.* 1 Vern. 207, 308. S. C. cited.

One witneſs againſt a defendant's anſwer not ſufficient. *Alam* and *Jourdon*, 1 *Vern.* 161. 3 *Cha. Ca.* 123. S. P. *Vide* 2 *Vern.* 554.

The oath of the party is ever looked upon in equity to be as good as the oath of a ſingle perſon.

Where the whole proof of any matter ariſes from the defendant's anſwer, the anſwer muſt be taken intire, and no part of it impeached by any other evidence. *Lucas's Rep.* 405.

Yet obſerve that caſes may, and do often happen, where the court may ground a decree upon the oath of a ſingle witneſs, attended with other circumſtances to corroborate it; as where the anſwer of the party appears to be notoriouſly falſified, by which means it comes to loſe that credit which otherwiſe it would and ought juſtly to have.

Where parol or collateral evidence will be admitted to explain, confirm, or contradict what appears on the face of a deed or will.

To ſhew that the teſtator intended his wife and executrix ſhould have the perſonal eſtate exempt from debts and legacies. 2 *Vern.* 252. and *vide* 1 *Chan. Ca.* 196. 2 *Vern.* 99. 5 *Co.* 67. 2 *Vern.* 98, 337, 625. *Treatiſe of Eq.* 126.

A. deviſed particular lands to his executors to be ſold for payment of all his proper debts, and gave directions to the perſon who drew the will, to give all his *perſonal* eſtate to his executors; but by miſtake that was omitted, tho' proved by the perſon who drew the will. *Harcourt* C. decreed the executors to account for the *perſonal* eſtate, ſaying, *he muſt conſtrue the intent of the teſtator out of the words of the will, and not upon parol evidence.* 2 Vol. Abr. Eq. 415. c. 5.

Where

Where *parol evidence* touching the teſtator's intention is not to be admitted, and why. *Vide* 3 *Will.* 353.

Parol evidence of the perſon who drew the will, admitted to ſhew what the teſtator intended to paſs by a deviſe of his houſhold goods. *Vide* 2 *Vern.* 517. Admitted to ſhew, that grandchildren born after the will, ſhould take. 2 *Vern.* 378.

Parol proof allowed of a man's intention in a will, where the queſtion was, if a legacy ſhould be a ſatisfaction of a debt due from teſtator to the legatee. 2 *Vern.* 593.

Parol evidence where to explain an implication in a will or deed, or upon a declaration and promiſe, have been allowed in this court. *MSS. Ca. in Chan. Dockſey* againſt *Dockſey*, *Hill.* 6 *Ann. Ibid. Lamplugh* againſt *Lamplugh*, *Mich.* 8 *Ann. Ibid. Harris* againſt *Horwell*, *Mich.* 7 *Ann.*

When a paper is produced by one party as a *charge*, the other may read any thing contained in it as a *diſcharge*. *Barnard. Rep. in Chan.* 128.

Where a teſtator has given inſtructions for his will, and before it could be executed, died; the inſtructions, and not the draught according to the inſtructions, ought to be proved, for they are the will, and not the draught. *MSS. Ca. in Chan. Sheſs* againſt *Pelham*, *Mich.* 8 *Ann.*

Parol evidence admitted, to ſhew that the deviſee promiſed the teſtator to pay an annuity. *Oldham* and *Litchford*, 2 *Vern.* 506.

Always admitted to aſcertain the perſon, or the thing deſcribed. *Hodgſon* and *Hodgſon*, 2 *Vern.* 593.—To ouſt an implication. 2 *Vern.* 648, 736. S. P. Parol proof admitted, to ſhew that a legacy greater than a debt due to the legatee, was not in ſatisfaction of the debt. 2 *Vern.* 593, 594.

[For more concerning parol evidence, *&c. vide* 2 *Vol. Abr. Eq.* (C) *p.* 415.]

If

If *A.* purchaſes in the name *B.* *A.* may be admitted to prove that he paid the purchaſe money, and ſo make it a reſulting truſt, or truſt by implication of law for himſelf. 1 *Vern.* 366.

An entry in the book of a ſteward of a manor, and parol proof by the foreman of the jury, was admitted as good evidence, that a feme covert ſurrendered her whole eſtate, although the ſurrender upon the roll, and the admiſſion thereon, was but of a moiety. 2 *Vern.* 547.

Of examining witneſſes, exhibiting interrogatories, publiſhing and ſuppreſſing their depoſitions.

(*a*) A Maſter examined a witneſs thrice to a matter of account, and the depoſitions were ſuppreſſed. 2 *Chan. Ca.* 79.

(*a*) If one of the parties after publication paſſed, has an order to examine on the uſual affidavit, the other party may not only croſs examine, but alſo examine at large. 1 Vern. 253.

One defendant cannot move to ſtrike another defendant out of the bill who hath never been ſerved with proceſs in order to make him a witneſs, but plaintiff may; and a defendant may have an order to examine ſuch defendant, ſaving juſt exceptions. *Gilb. Rep. in Eq.* 183.

A co-plaintiff, tho' but a truſtee, cannot be examined as a witneſs for another *plaintiff*; but if he had been made a *defendant* (*then the truſt had been upon oath*) he might upon *diſclaiming all intereſt* be a good witneſs. 1 *Vern.* 230.

If an interrogatory be leading, (*b*) that is ſufficient to ſuppreſs the depoſition. 2 *Vern.* 472. Yet after interrogatories, and the depoſitions of a witneſs thereon, had been ſuppreſſed, becauſe the interrogatories were leading, and then publication paſſed; and the court being moved, that new interro-

(*b*) Interrogatories and depoſitions ſuppreſſed as having been leading, but on the circumſtances of the caſe, and conſequence of the witneſſes evidence, leave was given to file new ones. Gilb. Eq. Rep. 150. Prec. in Chan. 493. As to the difference of examining in the office, and before commiſſioners, with regard to exhibiting a new ſet of interrogatories, or further examination of the ſame, or other witneſſes, vide ibid. 42.

interrogatories might be drawn and ſettled by the Maſter, for the examination of this witneſs, whoſe evidence was very material, though the practice was admitted to be always againſt it; and it was urged to be of dangerous conſequence; yet one precedent being produced to this purpoſe, and the interrogatories which had been ſuppreſſed being ſuch as might be drawn by many other counſel, without any apprehenſion of their being leading; the court, to permit the party to have the benefit of his witneſs's teſtimony, ordered new interrogatories to be put in and ſettled by a Maſter, for his re-examination. *Trin.* 1718. *Spencer* and *Allen.*

Though the general rule be, that after publication, no new witneſs can be examined, nor a witneſs before examined re-examined; yet upon ſpecial circumſtances ſet forth by motion and affidavit, the rule may be diſpenſed with. 1 *Chan. Ca.* 228. 2 *Chan. Ca.* 75. 1 *Chan. Ca.* 25.

Upon motion for leave to examine after publication, upon making the uſual affidavit of not having ſeen the depoſitions, *&c.* Lord Keeper declared, that in ſuch a caſe, the other ſide ſhould be at liberty to examine at large, as well as croſs examine the witneſſes, produced by the party who made the motion. 1 *Vern.* 253.

If interrogatories are exhibited in the examiners office, and witneſſes examined thereon, either party may, without any order for that purpoſe, exhibit new interrogatories for further examinaton of the ſame or other witneſſes: But when a commiſſion is iſſued, no new interrogatories can be exhibited before the commiſſioners, without motion and leave of the court. *Paſch.* 1714. *Andrews* and *Brown.*

In the qualification of witneſſes, equity follows the law: And if a man be rendered infamous in law;

law; as by an infamous judgment, or wants diſcretion and underſtanding, his teſtimony is to be rejected. And the caſes where the party is concerned in intereſt, though never ſo ſmall, have uſually prevailed, unleſs in ſpecial inſtances: And herein it muſt be conſidered whether their intereſt is ſo great as it may be preſumed to make them partial, or not.

As to evidence, the uſual courſe in this court is by depoſitions, for no witneſſes *viva voce* are allowed at the hearing, except by ſpecial order. And there being the ſame queſtion in both cauſes, and the defendant's defence being the ſame, the depoſitions in a former cauſe by order of court ſhall be read againſt him. But depoſitions in another cauſe, in which the matters in queſtion were not in iſſue, ſhall not be read. So depoſitions taken in a ſuit betwixt other perſons are not to be given in evidence; for he had no opportunity to croſs examine them. So depoſitions taken in a cauſe, where the plaintiff's father was a party to the ſuit, being in all matters the ſame, his father being only tenant for life, thoſe depoſitions could not be read againſt him; for the advantage ought in all caſes to be reciprocal. And where a cauſe is diſmiſſed, the matter of it not being proper for equity to decree, yet the fact in this cauſe proved, may be uſed as evidence between the ſame parties, whenever it ſhall come in queſtion again. But when a cauſe is diſmiſſed, not upon this ground, but for irregularity, ſo that in truth there was never regularly any ſuch cauſe in court, and conſequently no proofs, thoſe proofs cannot be uſed: For proofs cannot be exemplified without bill and anſwer, nor can they be read at law, unleſs the bill upon which they were taken can be read. No depoſitions ought to be allowed which were not taken in a court of record. And they are like

examinations of witneſſes. So that although the defendant may read what part he will, yet the other ſide may read the whole afterwards.

Note; Exhibits proved by depoſitions muſt be ſhewn at the hearing, if the party would have any benefit by them.

Depoſitions of witneſſes taken in *Ireland*, allowed good evidence in *Chancery* here. *Lord Altham* v. *The Earl of Angleſea*, *Gilb.* 16, 18.

A witneſs demurred to an interrogatory as not pertinent—but diſallowed. 1 *Vern.* 165.

Of depoſitions of witneſſes, and of proofs admitted in evidence in this court.

BY order, 19 *Jan.* 1694. no copies of depoſitions are to be read or made uſe of in court, or before a Maſter, but what are taken out of the proper office, and ſigned for the party, for whom the ſame ſhall be read.

The examiners, or their deputies, have liberty to attend in court to inſpect all copies of depoſitions, which are read either for the plaintiff, or defendant, and to ſee whether they be truly ſigned for the party that produces the ſame; and in caſe the examiner ſhall diſcover any fraud, or ill practice, the cauſe will be put off; and the parties offending ſhall ſtand committed to the *Fleet*, till the officer injured be agreed with, and paid his fees; and till five pounds be paid to ſuch perſon as the Lord Chancellor or Keeper ſhall appoint, for the uſe of the poor, and till the client injured by putting off the cauſe be reimburſed his charges in reſpect thereof, and till the further order of the court. *Ord. Chan.* 4.

Depoſitions taken in a former cauſe cannot be read in another cauſe againſt one who does not claim under the party againſt whom they were taken

taken (unleſs by ſpecial order).—But if a legatee brings a bill againſt an executor and proves aſſets, another legatee, tho' no party, may have the benefit of thoſe depoſitions. 1 *Vern.* 413.

Bill to perpetuate the teſtimony of witneſſes, and to prove a will, is ſuch a ſuit wherein if the proceedings are rightly carried on will affect one claiming as a purchaſer under one of the parties after filing the bill. *Barnard.* 453.

Depoſitions amended after publication, upon examination of the examiner and witneſſes, and the depoſitions re-ſworn. 2 *Will.* 646. —But the like application was denied. *Rep. of Sel. Ca. in Chan.* 25.

One examined as a witneſs *when diſintereſted*, he afterwards becomes intitled to the eſtate in queſtion, his depoſition ſhall be read. 2 *Vern.* 699. *Vide* 2 *Vern.* 472.

After publication you may examine as well to the *competency* as to the *credibility* of a witneſs; and a diſtinction between them exploded. 2 *Vern.* 464.

Defendant may read his own anſwer from the draught; *ſecus*, the anſwer of another muſt be from the office-copy. *Gilb.* 66.

A bond *cancelled* made an exhibit, and allowed as evidence to prove the execution of articles, the *limitation being recited and inſerted in the bond.* Gilb. 183.

A man's anſwer in the *ſpiritual court*, or *any where on oath*, may be read againſt him *here.* 1 *Vern.* 53.

Depoſitions of a ſick perſon, or one beyond ſea, may be read after an order for that purpoſe.

Croſs examining a witneſs by one ſide in any matter, tending to the merits, makes him a good witneſs to the other ſide, though otherwiſe liable

to an exception, as a Member of a corporation, *&c. Vern.* 254.

Order to prove a deed *viva voce* at hearing — but not permitted to prove witneſſes hands who were dead — but leave given (by putting off the cauſe) to go to the examiner. *Prec. in Chan.* 64.

Depoſitions taken in a cauſe where father is tenant for life, cannot be read againſt the ſon, tenant of the remainder in tail. *Ibid.* 212.

If defendant be examined as a witneſs, plaintiff muſt ſtand to his depoſitions as concluſive; and where a defendant is firſt examined, you ſhall not examine witneſſes to convict him of perjury.

A witneſs having finiſhed his examination on an account, now moved to be examined on the other ſide, and allowed. *Ayl.* 47.

Where a witneſs's depoſitions on the one ſide, contradict his depoſitions on the other, it is the courſe to order him to attend the court to explain himſelf, otherwiſe his depoſitions ſhall be ſuppreſſed. *Chan. Ca.* 298.

Depoſitions in one cauſe may be uſed in a croſs cauſe without motion; and where one party obtains an order, the other may uſe the ſame without motion.

No letters or notes not proved ſhall be uſed, but records upon motion may be proved *viva voce* in court.

Receipts for money paid cannot be proved *viva voce*, as that would be eſtabliſhing a charge which the other ſide have had no opportunity of examining to and diſproving. *MS. Notes.*

Depoſitions in a former cauſe between the ſame parties may be uſed by ſpecial order, and the adverſe party may alſo read them. 1 *Chan. Ca.* 175.

To ground a motion for longer time to examine, the affidavit muſt contain the names of the chiefeſt wit-

witneſſes, and the points to which they are to be examined. *Chan. Ca.* 317.

A copy of a deed to lead the uſes of a fine inrolled for ſafe cuſtody only, allowed to be read as evidence on a trial at law, whether ſuch deed of uſes was executed. 2 *Vern.* 471.

Depoſitions between the ſame parties in another cauſe are not to be read without order.—So of interlocutory — becauſe not knowing what may be read, the opportunity of contradicting them is loſt; and an interlocutory order may have been deſtroyed by a ſubſequent one. *Sel. Ca: in Ch.* 76.

Defendant not ſerved with proceſs, may on order be examined as a witneſs, or ſtruck out of the bill (by motion) before anſwer, or after, on coſts. 2 *Chan Ca.* 214.

If huſband and wife contradict, the depoſitions ought to be ſuppreſſed. *Chan. Ca.* 302.

Shop-books have ſometimes been read at the hearing, and ſometimes depoſitions in the admiralty. *Chan. Ca.* 306.

A man's book of accounts is evidence againſt him, not for him.

Pariſh-books, or church-books, no evidence.

Truſtees ſhall not be examined one againſt another.

Parties intereſted ſhall not be examined to prove a cuſtom.

Counſel, *&c.* ſhall not be examined to what came to their knowledge as counſel for their clients; to other matters they may.

Plaintiff's *own* proof of defendant's contempt *allowed.* 2 *Freem.* 132.

Witneſſes formerly examined *in Scaccario*, not to be re-examined in *Chancery* as to the ſame matter.

If a witneſs refuſe to be croſs examined, the court on motion will ſuppreſs his *ex parte* depoſition. *Chan. Ca.* 322.

No exceptions to witneſſes after publication. *Chan. Ca.* 322.

A witneſs cannot demur to queſtions as impertinent to the iſſue. *Vern.* 165.

Where there is only a ſingle witneſs againſt defendant's oath, this is not ſufficient evidence for a decree; nor will the court direct a trial at law, the *plaintiff having had the benefit of a diſcovery on defendant's oath.* 2 Vern. 283.

None can be a witneſs where his intereſt is concerned, be it never ſo ſmall or minute. 2 *Vern.* 317.

The plaintiff's chriſtian name being miſtaken in the title of the interrogatories, the depoſitions could not be read, nor would the court ſuffer the title to be amended, though moſt of the witneſſes ſince examination were gone beyond ſea. 2 *Vern.* 435.

In ſome caſes, the anſwer of one defendant may be read againſt the other. 2 *Vol. Abr. Eq. Title Anſwers, &c. p.* 67. *c.* 7.

A co-plaintiff, though but a truſtee, cannot be examined as a witneſs for the other plaintiff; but one defendant may be examined as a witneſs for the other: The reaſon of which is this, that if the cauſe miſcarries the plaintiffs would be liable to coſts, and therefore their ſwearing might be to exempt themſelves; beſides, it is their own act and choice that they are plaintiffs; but it is otherwiſe with defendants, for they are forced to be made parties at the will of the plaintiff; and if this act of the plaintiff ſhould intirely take away their teſtimony, it would be then in the power of any one who had a mind to oppreſs another, to deprive him of his defence, by making the moſt material witneſſes

witneſſes defendants in the ſuit. The court has therefore ordered it otherwiſe, and a defendant that is not materially intereſted, may be examined either on the part of the plaintiff or defendant, ſaving all juſt exceptions. *Caſey* v. *Beachfield*, *Mich.* 1715. *MS. Rep.*

Depoſitions read at the hearing of the cauſe, not to be read on appeal to the Lords.

A witneſs ſworn and examined to ſeveral of the interrogatories, dies ſuddenly before he has ſigned his examination; theſe depoſitions cannot be made uſe of, for they are no evidence. 1 *Will. Rep.* 414.

Where depoſitions of witneſſes may be amended after publication. See 2 *Will. Rep.* 646.

A pariſhioner is not a good witneſs to prove a charity given to the pariſh, but a lodger who does not pay to the poor is. 1 *Will. Rep.* 600.

A witneſs found to ſwear falſly in part, his teſtimony utterly rejected. *Dalton*, *p.* 271.

In all caſes in law and equity, a man and his wife are but as one witneſs.

A man outlawed is not to be received as a witneſs; *per* Lord Chancellor. *Cock* v. *Morgan.*

Copies of depoſitions are not to be recorded or exemplified. 2 *Chan. Rep.* 36.

Where the wife ſhall be allowed as evidence againſt the huſband. See *Caſes in Equity Abr.* 1 *Vol.*

A deed was executed, and altered by conſent of parties, and then *re-executed*; and *per cur.* this deed cannot be given in evidence as a *new* deed, unleſs it be ſtamp'd afreſh. 2 *Vol. Abr. Eq.* 414. *c.* 13.

A truſtee was examined as a witneſs, and afterwards was thought proper to be made a defendant, his depoſitions not allowed; tho' he pay no coſts, nor ſhall gain or loſe by the decree, becauſe the decree muſt be againſt him, if decreed for

the plaintiff, and his depoſitions are to affirm his own act.

One being ſerved with a *ſubpœna* to teſtify, upon ſhewing to the court by affidavit that he was ſolicitor in the cauſe, was diſcharged by order from being examined. *Cary Rep.* 81.

See in what caſes, after publication or death of the deponent, depoſitions may be explained, but not contradicted by new proof. 1 *Chan. Ca.* 25. *Hard. Rep.* 180. *Kelw.* 96.

The king's certificate allowed as evidence. *Hob. Rep.* 213. *Godbolt* 199.

An inquiſition *poſt mortem* may be read as evidence, though it is not concluſive evidence.

After defendant hath been examined on interrogatories, and publication paſſed, the plaintiff ought not to have a commiſſion to examine witneſſes in order to falſify defendant's examination, this tending to make cauſes endleſs. 3 *Will. Rep.* 413.

Depoſitions proving matters not charged in the bill, and put in iſſue, cannot be read. 1 *Vern.* 484.

The creditors of Lord *Lovelace* obtained a decree for payment of their debts, and to ſet aſide ſome conveyances gained by fraud; and Sir *H. Johnſon* and the legatees are made defendants: The legatees having brought their bill againſt Sir *H. Johnſon*, the queſtion was, if the depoſitions in the former cauſe, touching the fraud, might be read in this cauſe. *Per cur':* The queſtion being the ſame in both cauſes, and Sir *H. Johnſon*'s defence the ſame, the depoſitions ought to be read. 2 *Vern.* 447.

After bill filed and anſwer come in, a replication was filed, and ſeveral witneſſes were examined, and their depoſitions taken; then the plaintiff moved to withdraw his replication, and took exceptions to the anſwer, and there was a replication, and other witneſſes were examined. On the hear-

ing the firſt depoſition was offered to be read, but rejected and ſuppreſſed; they ſhould have examined the witneſſes *a new* after coming in of the ſecond anſwer and replication filed, or have moved the court for liberty to uſe the former depoſitions at the hearing. *Gilb.* 42.

5 *Dec.* 1753. In a cauſe at *Lincoln's Inn Hall* concerning a *modus* for ſmall tithes due to the Vicar of *Weſtham* in *Eſſex*, a ſurvey taken by commiſſioners appointed by the Commons *tempore uſurpationis*, of the lands of King *Charles* the firſt, his Queen, &c. — (the manor of *Weſtham* being part of the Queen's dowry) was produced in evidence to prove, that tithes were thereout payable to the Vicar. — Lord Chancellor ſaid, that that ſurvey was taken with a great deal of care, as the then governors were willing to get all they could—and that it had always been given in evidence in the court of Exchequer, and had been remarked as being very exact and particular. *MS. Notes.*

A LIST OF OFFICERS OF THE High Court of Chancery.

Lords Commiſſioners for the Cuſtody of the Great Seal.

Mich. Term 1756. The right Honourable the Lord Chancellor reſigning,

THE right Honourable Sir *John Willes*, Knt. Sir *Sidney Stafford Smith*, Knt. and Sir *John Eardley Wilmot*, Knt. were appointed Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*.

Maſter of the Rolls.

The right Honourable Sir *Thomas Clarke*, Knt.

Maſters in Chancery.

Robert Holford, Thomas Lane, Thomas Bennet, Francis Eld, John Waple, Samuel Burroughs, William Spicer, Richard Edwards, Edmund Sawyer, Henry Montague, Thomas Harris, *Eſquires*.

Chief Regiſter.

Charles Duke of *St. Albans*.

Deputy

Deputy Regiſters.

Richard Howard, William Bowyear, jun. *Eſqs. deputy regiſters for the Lord Chancellor.*

Thomas Eld, John Dickens, *Eſqrs. Rolls regiſters.*

Richard Rainsford, *Eſq; clerk of the reports and cuſtody of the entry books.*

Francis Bowyear, Francis Dickens, *Eſqs. entering clerks.*

Accomptant General.

John Waple, *Eſquire.*

Six Clerks.

1. Thomas Bridges, ——
2. John Collins,
3. Chriſtian Gincke,
4. Samuel Reynardſon,
5. Iſaac Whittington,
6. William Mitford, *Eſqs.*

Sworn Clerks and Waiting Clerks, in each reſpective Six Clerk's diviſion.

Sworn Clerks in the firſt diviſion.

Mr. Thomas Marriot, *Mr.* William Neale, *Mr.* Harcourt Powell, *Mr.* ———*, *Mr.* Sackville Amherſt, *Mr.* ——— Martin, *Mr.* Thomas Whitfield, *Mr.* Giles Stuart, *Mr.* George Townſend, *Mr.* Frederick Scrope.

* Vacant ſeat.

Waiting

Waiting Clerks.

* Vacant ſeat. *Mr.* Alexander Kellet *and* * ———

Sworn Clerks in the ſecond diviſion.

Mr. John Cholwich, *Mr.* Jernegan Chevely, *Mr.* Joſeph Bliſſet, *Mr.* ——— Boutflower, *Mr.* Oliver Edwards, *Mr.* ——— Ivatt, *Mr.* Thomas Bramſton, *Mr.* Samuel John, *Mr.* Charles Hodges, *Mr.* Daniel Fox.

Waiting Clerks.

* Vacant ſeat. *Mr.* ——— Donnythorne *and* * ———

Sworn Clerks in the third diviſion.

Mr. ——— Baynard, *Mr.* Richard Davis, *Mr.* John Wainwright, *Mr.* Samuel Roycroft, *Mr.* William Briſtow, *Mr.* Alexander Hamilton, *Mr.* ——— Cheſter, *Mr.* ——— Biſhop, * ———, ———

* Two vacant ſeats.

Waiting Clerks.

Mr. Francis Awſe *and Mr.* Phineas Andrews.

Sworn Clerks in the fourth diviſion.

Mr. Francis Dalton, *Mr.* Richard Comyns, *Mr.* Francis Douſe, *Mr.* James Clarke, *Mr.* Charles Bicknell, *Mr.* John Fawkes, *Mr.* John Coleman, *Mr.* William Sneyd, *Mr.* John Taſker, *Mr.* Edward Howard.

Waiting Clerks.

* Vacant ſeat. *Mr.* Henry Legh *and* * ———

Sworn

Sworn Clerks in the fifth diviſion.

Mr. Thomas Melmoth, *Mr.* Thomas Halfpenny, *Mr.* Henry Holden, *Mr.* Thomas Cremer, *Mr.* Richard Palmer, *Mr.* Francis Newdigate, *Mr.* ——— Bower, *Mr.* Maurice Robinſon, *Mr.* ——— Brocket, *Mr.* ——— Hutton.

Waiting Clerks.

Mr. Francis Mitchell *and* * ——— * Vacant ſeat.

Sworn Clerks in the ſixth diviſion.

Mr. Henry Brougham, *Mr.* Barrington Horſemanden, *Mr.* Joſeph Nicholls, *Mr.* Robert Handley, *Mr.* James Lawſon, *Mr.* Richard Middleton, *Mr.* John Wilſon, *Mr.* —— Gunſton, *Mr.* Richard Fleming, *Mr.* Nathaniel Templeman.

Waiting Clerks.

Mr. Thomas Fell *and Mr.* George Wade.

Maſters of the Subpœna *Office.*

Mr. Pauncefote Green *and Mr.* Thomas Head.
Mr. Abraham Hancock, *their deputy.*

Regiſter of the Affidavits.

Jeremy Sambrooke, *Eſq;*
Mr. Eleazar Holdſworth, *his deputy.*

Principal Examiners.

John Spooner *and* Edward Northey, *Eſqs.*

Deputy

Deputy Examiners.

Mr. William Rawlins, *Mr.* John Nourſe, *Mr.* John Peck, *Mr.* Joſiah Shaw, *Mr.* Barnabas Richards, *Mr.* John Turner.

Copying Clerks.

Mr. Peter Bennet, *Mr.* Thomas Cheyne, *Mr.* James Harvey, *Mr.* Tamerlane Gwillim, *Mr.* * ——— *Mr.* Joſiah Burgis, *Mr.* Francis Stephens, *Mr.* Thomas Burgoyne.

* Vacant.

Serjeant at Arms.

Richard Jephſon, *Eſq;*

Warden of the Fleet.

John Eyles, *Eſq;*

Uſher.

——— Dennis, *Eſq;*

Deputy.

Mr. Charles Gold.

Clerk of the Chapel of the Rolls.

Mr. Henry Rooke.

If there ſhall appear to be any *miſtake* in this *liſt* of Officers, *&c.* the *reader* is deſired to correct the ſame.

TABLES

TABLES OF FEES.

Subpœna *office.*

	l.	*s.*	*d.*
FOR every common *ſubpœna.*	0	4	0
For every common *ſubpœna* renewed.	0	1	6
For every ſpecial *ſubpœna*, beſides the duty and ſeal.	0	6	8
For every ſpecial *ſubpœna* renewed.	0	3	4
For every looſe label.	0	0	6

Six Clerks office.

The fees of the Six Clerks.

OUT of all copies of proceedings filed in the Six clerks office, for every office copy ſheet,	0	0	4
Out of all exemplifications of bills, anſwers and proceedings in the ſame office, *per* ſkin.	0	14	0

For

	l.	s.	d.
For examining and ſigning every decree or diſmiſſion.	0	17	0
For the cuſtody of every bond entered into by order of court to the Six Clerk with whom the ſaid bond is lodged.	0	3	4

The fees of the Sworn Clerks and Waiting Clerks, including the ſtamp-duty.

FOR filing every bill, and for the rule to anſwer, including the Term-fee.	0	5	4
For an *attachment*.	0	6	0
For every *proclamation* and *diſtringas*.	0	6	4
For a *commiſſion of rebellion*.	0	19	4
For a *ſequeſtration*.	0	15	4
For a *ne exeat regno*.	0	14	10
For a *habeas corpus*.	0	14	2
For a *dedimus poteſtatem* to take an anſwer.	0	9	4
For every ſpecial *dedimus* by order of court.	0	12	8
For a commiſſion to examine witneſſes with the oaths.	0	15	4
For joining in commiſſion.	0	6	8
For every ſpecial commiſſion for dividing lands, and aſcertaining boundaries or otherwiſe, by ſpecial order of court.	0	19	8
The ſtamps and other outgoings are included in this 19*s*. 8*d*.			
For every writ of execution upon an order, if an order of one ſide.	0	6	8
If more.	0	13	4
If longer, then *per* ſkin, beſides ſtamps.	1	6	8
For every common *injunction*.	1	2	8

For

	l.	s.	d.
For every ſpecial *injunction.*	1	6	0
For every Term the cauſe is in agitation, the ſworn clerks on each ſide of the cauſe, are intitled to a Term-fee of	0	3	4
For the appearance of every defendant who appears ſeparately by himſelf.	0	3	4
If two or three defendants appear by the ſame clerk (reckoning huſband and wife as one) the fee for appearing is	0	3	4
But if more than three, not exceeding ſix defendants appearing together, their appearance fee is	0	6	8
If more than ſix, the appearance fee is	0	10	0
And ſo in proportion to the number of defendants, reckoning 3*s.* 4*d.* for every three, man and wife ſtill computed but as one.			
For copies of all bills and anſwers, depoſitions and other proceedings, for each ſheet containing fifteen lines, and ſix words in every line, including the 4*d. per* ſheet paid to the Six clerk.	0	0	10
For a rule to produce witneſſes, or to paſs publication and notice thereof, including the ſtamp duty.	0	4	4
For ſettting down a cauſe for hearing before the Lord Chancellor, or Maſter of the Rolls, by the Six clerk, according to the right they claim for ſo doing, for each cauſe ſo ſet down.	1	5	0
For drawing and inrolling decrees and diſmiſſions, if not exceeding one ſkin.	1	13	4

The

	l.	s.	d.
The like for inrolling.	1	6	8
But if the decree or diſmiſſion be longer than one ſkin, then for drawing every ſheet 8 *d.* computed at office copy ſheets. And for inrolling each ſheet 8 *d.* and then the ſuitor pays the 17 *s.* to the Six clerk.			
For a writ of execution of a decree, for every ſkin.	1	6	8
For attending the court on the day of hearing of every cauſe wherein they are concerned.	0	6	8
For all other attendances on the court when required, each attendance is	0	6	8
For every attendance on a Maſter for taxing of coſts.	0	6	8
For every attendance on the Maſter on other occaſions, if required, if with the ſolicitor in the cauſe.	0	3	4
If without the ſolicitor, then	0	6	8
For entring an appearance with the Regiſter, according to any order of court.	0	3	4
For ſigning their conſent as clerks in court to any petition, agreement or election.	0	3	4
For drawing every certificate to be ſigned by the Six clerk.	0	2	8
For examining all copies of bills, anſwers, depoſitions of witneſſes, interrogatories or other proceedings with the records in order for evidence, if 80 ſheets.	0	6	8
But if more than 80 ſheets, then after the rate of 1 *d.* *per* ſheet.			

	l.	s.	d.
For the exemplification of any record (beſides the ſtamps, the Maſter's fee for examining, and ſworn clerk's fee for attending to examine, and hanaper fee) for every ſkin thereof	1	6	8
For drawing and ingroſſing the docquet and Maſter's certificate beſides the ſtamp which is 1*s.*	0	3	4
For attending the Maſter to examine exemplifications that exceed not three ſkins.	0	6	8
If more, then in proportion to 6*s.* 8*d.* for every three ſkins.			
For every writ of aſſiſtance to put the defendant in poſſeſſion purſuant to a decree.	0	16	4
For the copies of all deeds, writings, papers, letters and accounts left with any clerk in court purſuant to an order of court, or referred to in any of the pleadings, for each ſheet, computing office-copy ſheets,	0	0	4
For every attendance to produce ſuch deeds, papers, letters or accounts for the adverſe party to inſpect, if no copy be taken	0	6	8
But if any copy of ſuch deeds, papers, *&c.* be taken, then nothing is to be taken for inſpection or attendance thereon.			
For every *certiorari*, *procedendo* and *ſuperſedeas*, each	0	8	8

Affidavit office.

	l.		
FOR filing, regiſtring, copying and ſigning every affidavit, the firſt ſide	0	2	0
Every other ſide beſides duty	0	0	8
For every copy from the office the firſt ſide and ſigning	0	1	4
Every other ſide beſides duty	0	0	4
For every certificate	0	1	0
For every ſearch	0	0	6

Regiſter's office.

FOR drawing all orders each ſide beſides duty	0	3	0
For copies of all orders, exceptions and petitions, the firſt ſide	0	1	6
Every other ſide beſides duty	0	1	0
Entring orders each ſide beſides duty	0	0	6
For entring a cauſe for hearing	0	1	0
For a note to ground a *ſubpœna* to hear judgment	0	0	8
For every decree	0	5	0
For every diſmiſſion	0	3	4
For every certificate	0	1	6
For the Regiſter's hand to all certificates	0	1	0
For filing every election	0	0	4
For ſearching the old books for any order or decree for every year	0	0	4
For entring an *attachment* or *proclamation*, each with duty	0	1	2
For entring all rules of courſe to anſwer, produce witneſſes, and for publication, *&c.* for each with duty	0	1	4
For entring all amerciaments	0	1	0
For entring all appearances on contempts	0	2	10

	l.	s.	d.
For entring of all bills of coſts taxed for want of a bill filed in time with duty	0	1	4
For all copies of attachments, proclamations, commiſſions of rebellion, &c. for each	0	0	4
For entring all pleas or demurrers	0	1	0
Poundage for all money depoſited with the Regiſter	0	1	0
For examining all orders with the entring clerks to be uſed as evidence at law, *per* ſide	0	0	2
For examining all orders and reports with the clerk of the reports, and cuſtody of the entry books to be uſed as evidence at law, *per* ſide	0	0	2
For filing every report, certificate and award	0	4	0
For copies of all reports, for the firſt ſide	0	1	6
For every other ſide beſides duty	0	1	0

Examiner's office.

FOR the examination of every perſon and oath.	0	2	0
For copies of depoſitions, interrogatories, &c. *per* ſheet	0	0	10
For every exhibit certified by the examiner	0	2	0
For every certificate	0	2	0
For the examination of any copy of depoſitions with the original to be given in evidence in another court	0	6	8
For the examination of every witneſs, upon whom the examiner attends out of the office, if near	0	6	8

If far off, or the examiner occaſioned to go often, more according to his trouble, at the diſcretion of the party concerned.

My Lord Chancellor's Secretary.

	l.	*s.*	*d.*
FOR every petition for ſetting down pleas, demurrers, or exceptions	0	10	0
For every petition for re-arguing pleas, demurrers or exceptions	0	12	6
For every petition for ſetting down cauſes for hearing, for each cauſe	1	0	0
Where there are ſeveral pleas or demurrers, or croſs cauſes, then the fees are double if two, and treble if three.			
For a warrant to the Serjeant at arms, Meſſenger or Warden of the *Fleet*	0	15	0
For each petition for a *ne exeat regno*	0	12	6
For every petition for a letter to a Peer, and for the letter	1	5	0
For every reference on a petition to the chief juſtices or other judges concerning by-laws	0	12	6
For a petition to have the ſame ſigned	0	12	6
For a petition for an *homine replegiando*, or concerning the cuſtody of any infant, or other matter where no cauſe depending	0	12	6
For backing each *habeas corpus*	0	2	0
And *ne exeat regno*	0	2	6
For each petition for a *ſupplicavit*	0	12	6
For a *caveat*	0	5	0
For copies of *affidavits*, according to their length, as in the *affidavit* office.			

The door-keeper of this court.

	l.	*s.*	*d.*
HE receives the ſeveral following fees, which he diſtributes amongſt the ſeveral officers who are reſpectively intitled thereto:			
For every cauſe heard at *Weſtminſter*, if the bill be diſmiſſed, the defendant pays him a fee of	0	10	0
If a decree for the plaintiff, he pays him	0	10	0
If an iſſue at law, or attornment directed, each party pays	0	10	0
For every guardian admitted in court at *Weſtminſter*	0	10	0
For every cauſe heard in court at the Rolls in Term-time	0	7	6
For every guardian admitted at the Rolls in court	0	6	0

Note; In *Trinity* and *Eaſter* Terms, when the Maſter of the Rolls ſits in the Chapel, the Uſher has nothing out of any cauſe heard, or guardian admitted in Term-time, which increaſes the door keeper's fee 1 *s.* in each of the two laſt articles for thoſe Terms.

Secretary of the Maſter of the Rolls.

You pay to the Secretary of the Maſter of the Rolls for every petition 5 *s.* and to the under Secretary 6 *d.*	0	5	6

Secretary of the Lunaticks.

	l.	*s.*	*d.*
FOR every petition for a writ *de lunatico inquirendo*	0	15	0
For every petition for grant of the cuſtody	1	7	6
For each order made on hearing	1	7	6
For entring a *caveat*	0	5	0
For filing and copying every affidavit for the firſt ſheet	0	2	0
For every other ſheet	0	0	8
For a copy of orders of court or petitions, for the firſt ſide	0	1	6
For every other ſide	0	1	0
For ſetting down every petition to be heard	0	1	0
The clerk of the cuſtodies of idiots and lunatichs ought not to to take any fee for attending the ſeal, hanaper or clerk of the docquets with any commiſſion or grant relating to them.			

N. B. There are many other officers and fees beſides thoſe before-mentioned, ſeveral of which are, and others are not, relative to the proceedings in equity; both which I have purpoſely omitted, as matters beyond the preſent deſign, and refer the reader to the order made by the late Lord Chancellor *Hardwicke* of the 28th day of *Nov.* 1743.

CHAP.

CHAP. III.

Of publication, and ſetting down cauſes; and of hearings, rehearings, and appeals. And firſt of publication.

PUBLICATION in a cauſe is that power or liberty which is given the Six clerks, or clerks in court, either by rules or order of court, or by conſent of parties, to ſhew the depoſitions openly, and to give out copies of them.

And when both the plaintiff and defendant have examined ſuch witneſſes as they think proper, and are ready to go to hearing, the clerks in court on both ſides may paſs publication by conſent; which is done by ſignifying the ſame in one of the Rule books in the Six clerks office, upon which publication immediately paſſes. Or where witneſſes are examined in court by the examiners, they may give each other rules for publication; firſt an ordinary rule, to produce witneſſes, and then another rule for a day to ſhew cauſe why publication ſhould not paſs: But if the witneſſes are examined on both ſides, upon a commiſſion, one rule only is ſufficient; and the day given by ſuch rule is a week, which being expired, and no good cauſe ſhewn to the contrary, publication paſſes: And either party that has examined, and would have publication paſs, may give the rule.

The cauſe being at iſſue, and one ſide having examined witneſſes, but the adverſe party having not, nor had a commiſſion; the other party is to give him firſt a rule to produce witneſſes, and after that a rule to paſs publication; and if the other ſide want to examine, they may petition or

move the court, and obtain an order to inlarge publication, and for a commiſſion to examine, if in the country; or if in town, they may examine them in the examiner's office; but if they do not examine them within the time limited for inlarging publication, then publication paſſeth: And ſuch rules for publication are proper to be given where witneſſes are examined in court for the plaintiff, or *ex parte* by commiſſion, or where none are examined on either ſide, to conclude the adverſe party from examining.

After examination of witneſſes, publication may be ſtayed or inlarged, by motion or petition, on reaſonable cauſe ſhewn.

The court, on cauſe ſhewn, and ſometimes on a bare motion, will inlarge publication; but it muſt be on notice, and upon good reaſon offered to the court, and upon affidavit ſhewing the reaſon why the party could not examine his witneſſes ſooner; and it is ſeldom or ever done where it is to put off the hearing of the cauſe; but where the cauſe is not ſet down, or where the party is not ſerved with a *ſubpœna* to hear judgment, there the court will inlarge publication for aſking. In ſome other caſes they will do it, though the cauſe is ſet down, and party ſerved to hear judgment; but this, when it is ſhewn to the court that it is not poſſible for the cauſe to come on very ſoon, and the court will expect the party to appear *gratis* to hear judgment on ſix days notice to his clerk in court, and pray no day over, and will often oblige him to take no advantage for want of parties at the hearing: This forwards the plaintiff; for if a defendant is made at the hearing, a decree cannot be made abſolute till the next ſucceeding Term. But if the party who moved to inlarge publication, will not agree to appear *gratis*, he is often denied his motion; for it ſeems

he

he only intends delay, which the court always avoids when it is in their power.

Where publication is actually paſt, and the depoſitions delivered out, if the adverſe party moves to inlarge publication, he muſt offer good reaſons by affidavit of ſome material witneſſes, and the reaſons why they could not attend and be examined before publication paſſed.

And in this caſe the party muſt make oath, and ſo muſt his clerk and ſolicitor, that they have never ſeen, read, nor been informed of the contents of the depoſitions taken in the cauſe, nor will they, *&c.* till publication is duly paſt; and on ſuch affidavit it is uſual to inlarge the publication, and give the party opportunity to examine witneſſes; but he is limited to a time, and ſo as not to put off the hearing; and where that is not the caſe, it would be hard to drive defendant to hear his cauſe without proof.

There was a remarkable inſtance in Lord *Somers*'s time, where an artful ſolicitor got copies of his client's depoſitions, and immediately went with them to the adverſe ſolicitor, and ſhewed him the depoſitions; and to make ſure work of it, read them over to him: His adverſe party being ignorant of the rule, told him, they muſt notwithſtanding have an opportunity to examine their witneſſes; and ſoon after bringing his witneſſes to the examiner's office, was told they could not be examined, becauſe publication was paſſed, and the depoſitions delivered out; the man being ſurprized at this, went to his clerk in court to know what he was to do, and being ſtartled at hearing of the affidavit that was requiſite, told him the whole ſtory, which being laid before the court, the court inlarged publication, and gave the party an opportunity to examine his witneſſes,

and

and the adverſe party narrowly eſcaped commitment for this male practice.

As concerning publication of depoſitions taken *de bene eſſe*, it is when the party is either beyond ſea, and not returned, or is dead; in which caſe, upon producing and proving the regiſter of his death, order may be had by petition or motion for publiſhing his depoſitions, and the certificate of the death of the witneſs muſt be annexed to the petition. It cannot be done without ſuch order; and the party muſt ſhew he died before he could be examined in chief; and the court will not only order the depoſitions to be publiſhed, but to read him as a witneſs at the hearing, ſaving juſt exceptions; and notice is always to be given to the adverſe party hereof. This notice is to prevent ſurprize, and to give him an opportunity to object as he ſhall ſee occaſion. And if the witneſs be beyond ſea, and not returned, there muſt be an affidavit of it, and that the party has not heard from him of ſuch a time, nor does he know whether he is living or dead; and in this caſe there will be a like order as in the caſe of a witneſs who died before he could be examined in chief.

Note; Rules are entered with the regiſter in the following manner, together with the date when entered, and the clerk in court's name; but they are to be entered in Term-time only.

Rules.

A day is given to the defendant to anſwer.
A day is given to the defendant to make a better anſwer.
A day is given to the defendant to produce witneſſes.
A day is given to the defendant to ſhew cauſe why publication ſhould not paſs.
A day is given to the defendant for paſſing publication upon a joint commiſſion.

And

And obſerve that theſe rules muſt alſo be entered in the rule book belonging to the Six clerk *where the cauſe originally began*, though the clerk in court who enters them ſhould be of another diviſion; and after they are ſo entered in the houſe book, the ſame are alſo to be entered with the Regiſter as aforeſaid; for which 1*s.* 4*d.* is paid, and then notice thereof is given in writing to the adverſe clerk in court.

After a rule is given to paſs publication on a joint commiſſion returned; an order, before that rule is expired, may be obtained (on petition to the Maſter of the Rolls without any affidavit) to enlarge publication, but not to hinder ſetting down the cauſe.

When publication is paſt, the depoſitions copied and delivered out, if either party is minded to examine to the credit of any of the witneſſes, the way is, (*for the rule of evidence is the ſame in equity as at law; if the party cannot be good evidence in law, no more can he be in equity*) they muſt file objections, or articles ſo called, in the examiner's office, which muſt contain in ſubſtance the objections made to the reputation of the witneſs; as in caſe of felony, burglary, pillory, perjury or forgery, or any other criminal caſe, that would diſable the party from being a good witneſs at common law: Or theſe articles may be founded on the party's leading a lewd life, or being a common drunkard or ſwearer, or of ill repute and character in his neighbourhood; a common vagabond, a man unknown, of no abode, or ſuch like. Though theſe latter objections ſeldom come to any thing; for notwithſtanding all this, the man is a legal witneſs, and the court will hear his evidence, and judge of the *probability* and *improbability*. Accordingly theſe articles being

being filed, and a certificate from the examiner that they are ſo, the court on application by motion or petition, or indeed it may be done without, will permit the party to examine witneſſes thereon; and the other party is to ſupport the credit and reputation of his witneſſes, and may examine accordingly *toties quoties*, and their depoſitions muſt be publiſhed, as in other caſes; but this caſe rarely happens, and generally ends in an unneceſſary expence.

If both parties examine a witneſs, neither can afterwards object againſt reading him; for they have by the examination eſtabliſhed his evidence.

Setting down cauſes.

THE plaintiff may of courſe have the cauſe ſet down for hearing before my Lord chancellor, or Maſter of the Rolls, the Term next enſuing after publication; and by ſpecial order the ſame Term publication paſſes: And if the plaintiff omits ſetting down his cauſe the next Term after publication is paſt, it may be ſet down at the requeſt of the defendant the next following Term.

No motion is to be made to haſten a cauſe to a hearing, nor cauſe entered with the Regiſter for hearing, without a certificate from the Six clerk that the pleadings are filed.—— The Six clerks uſually give notice to the ſworn clerks when they intend to ſet down cauſes, who then upon apply to their reſpective Six clerks, ſhewing them the depoſitions publiſhed, and leaving with them a ſhort account in writing, of the nature of ſuch cauſes as they would have ſet down to be heard, for which the clerk in court charges his client one pound five ſhillings, if ſet down at the Rolls, and one pound ten ſhillings, if ſet down

before the Chancellor; but otherwiſe, if they are ſet down by the Regiſter, in which caſe you muſt obtain the Six clerk's certificate, and therewith apply to the Regiſter, who will ſet down the cauſe, and make you a note for grounding *ſubpœna's* to hear judgment, which you annex to the *ſubpœna* note, and on leaving the ſame at the *ſubpœna* office, have *ſubpœna's* made out.

It may not be amiſs here to obſerve, that the day a cauſe is ſet down to be heard on, muſt be ſooner or later, according to the priority of publication, with reſpect to cauſes preſented for hearing; and the cauſes ſet down to be heard are entered in the Regiſter's book: And they are to keep in their office a book wherein are entered all cauſes, pleas, demurrers, exceptions to reports, and the like, that are ordered to be ſet down for hearing; and in order thereto, all clerks, ſolicitors and others, are to bring to the Regiſter's office in due time, all orders for ſetting down of cauſes, pleas, demurrers, exceptions to reports, and the like, otherwiſe they will be reſpectively put off from hearing for that time, and ſhall not come on again to hearing without farther order.

Subpœna's to hear judgment muſt be made returnable, and ſerved at leaſt ten days before the day of hearing, if the defendant lives in *London*, or within ten miles thereof; but if the defendant lives in the country, he muſt be ſerved fourteen days before the return thereof; and on the back of the writ muſt be ſet down the very day appointed for hearing.

A *ſubpœna* to hear judgment is either to be ſerved perſonally, or elſe left with one of the houſe or family of the party; and if above twenty miles from *London*, it muſt be ſerved fourteen days excluſive before the time to hear judgment, except in the ſhort Vacation between *Eaſter* and

Trinity

Trinity Terms, and then ten days. *Vide Ord. Chan.* 116. But if within twenty miles of *London*, if it be ſerved ten days before the time to hear judgment, it is generally ſufficient; and in the ſhort Vacation it muſt be ſerved ten days before the return; and an affidavit of ſervice is requiſite, becauſe of the coſts to be paid for not appearing, *&c.*

If the plaintiff procures the cauſe to be ſet down for hearing, but does not ſerve the defendant with a *ſubpœna* to hear judgment; if the defendant attends, and the plaintiff does not proceed, or go on in hearing the cauſe, in that caſe the cauſe is ſtruck out of the paper, and no coſts is given on either ſide; but if the plaintiff ſerves the defendant with a *ſubpœna* to hear judgment, and the defendant makes and files an affidavit of ſuch ſervice, and the cauſe being in the paper, and the plaintiff's counſel does not open the bill; then upon reading the defendant's affidavit of ſuch ſervice, the court will diſmiſs the plaintiff's bill with coſts to be taxed.

But if the cauſe be ſet down at the defendant's requeſt, and the complainant appeareth not, the defendant can take no advantage of it, unleſs the *ſubpœna* to hear judgment appears to have been ſerved on the plaintiff; and otherwiſe the plaintiff is in no default: But if the plaintiff refuſes to appear and open his bill, on reading an affidavit of ſervice, the court will diſmiſs the bill with coſts to be taxed.

Commonly, if the party, who hath a cauſe to ſet down for hearing, is not ready to hear it at the day, but deſires it may ſtand over to a farther day, he muſt pay the other party the coſts of the day, if the court thinks fit to indulge a farther day. Yet when a cauſe is ſet down at the defendant's requeſt, if the plaintiff (not being ſerved with

with proceſs to hear judgment) and his counſel attend, and the defendant with his counſel do not, the plaintiff ſhall have no coſts, as he was not compelled to appear without ſervice of a *ſubpœna* to hear judgment, and the defendant might chuſe whether he would go on to have the cauſe heard, or not.

It is neceſſary to have an affidavit of ſervice of the *ſubpœna* to hear judgment ready at the hearing, ſo that ſervice may be proved if the defendants ſhould not attend; but this affidavit is ſometimes not filed till after hearing; for if the defendants attend it is uſeleſs: But if there be the leaſt ſuſpicion of the defendant's counſel not appearing at the hearing, the affidavit of ſerving the *ſubpœna* ought to be filed before the hearing; for the court may refuſe to give judgment for want of the affidavit being filed.

Between *A. B.* complainant,
C. D. defendant.

In *Chancery.*

Affidavit of ſerving a *ſubpœna* to hear judgment.

E. F. *of*, &c. ——— *maketh oath, That he this deponent did on the* ——— *day of* ——— *laſt paſt perſonally ſerve the ſaid defendant with a* ſubpœna *iſſuing out of and under ſeal of this honourable court, by which ſaid* ſubpœna *the ſaid defendant was required to appear in this honourable court the* ——— *day of* ——— *now laſt paſt, to hear judgment the* ——— *day of* ——— *aforeſaid, at the ſuit of the complainant above named, by delivering the body of the ſaid* ſubpœna *to the ſaid defendant under ſeal as aforeſaid.*

E. F. Sworn, *&c.*

Hearings

Hearings.

BY order upon conſent, the parties may appear, anſwer, and go to hearing *gratis*; and ſo they may do without order, ſave only for ſo much as breaks in upon the common courſe of the court, as time for publication, *&c.* which cannot be altered by conſent, without a ſpecial order for that purpoſe.

The cauſe being ſet down, and ſtanding in the paper for hearing, the clerks in court, and ſolicitors on both ſides are to attend the court with the pleadings, that the ſame may be read as occaſion requires, *&c.* And all office copies are to be ſigned by the reſpective Six clerks concerned in the cauſe, otherwiſe they will not be ſuffered to be read.

The method of hearing cauſes in court is generally thus: The parties on both ſides appearing, one of the junior counſel for the plaintiff opens the bill, and another for the defendant opens the anſwer; after which the plaintiff's ſenior counſel ſtates the caſe, and the matters in iſſue, and briefly touches on the proofs; and then they proceed to read firſt on the plaintiff's ſide, and then on the defendant's, the proofs to ſuch material points as are controverted; the counſel on each ſide debating the matter either of law or equity, that ariſes thereupon, the plaintiff's counſel always concluding the argument; after which the court pronounces the decree, the minutes of which are taken down and frequently read in court by the regiſter.

If the defendant or his counſel do not appear at the day of hearing, on affidavit being made that he was ſerved with proceſs to hear judgment, the cauſe is to go on; *viz.* the bill is opened,

and the beginning of the defendant's anſwer read; and if the matter appears plainly for the plaintiff, the court will make ſuch decree as the plaintiff's counſel prays: But a day in ſuch caſe is always by the court given to the defendant to ſhew cauſe to the contrary againſt the decree ſo pronounced, commonly with theſe or the like words, *viz.*

And this decree is to be binding to the defendant, unleſs he being ſerved with a ſubpœna *to ſhew cauſe againſt the ſaid decree ſhall at the return thereof ſhew unto this court good cauſe to the contrary; but before he is admitted to ſhew ſuch cauſe, he is to pay unto the plaintiff his coſts of this day's attendance to be taxed by the Maſter.* And the decretal order is to be drawn up accordingly; and before he is admitted to ſhew cauſe againſt it, he ſhall produce a certificate from the plaintiff's attorney in court, That the coſts are paid, or an affidavit of the tender and refuſal; after which he may petition that the cauſe may be ſet down again to be heard.

The decree *niſi cauſa* being drawn up, paſſed and entered with the Regiſter, the plaintiff ſues out a *ſubpœna* againſt the defendant to ſhew cauſe againſt the decree, and ſerves him therewith, as in other *ſubpœna's*; but this writ being a judicial proceſs, it muſt and always is made returnable in Term-time; if it ſhould be made returnable out of Term, or at any of the Seals, as was once done, it would be ſet aſide for being irregular: The words of the *ſubpœna* are to ſhew cauſe according to the order of the court, bearing date ſuch a day and year, *&c.*

There is no prefixed time for the ſervice of this *ſubpœna*, nor how many days notice the defendant is to have between the ſervice and the day to ſhew cauſe; it were to be wiſhed that it might be as in caſe of *ſubpœna's* to hear judgment: Though indeed, where the decree is made

at any of the days of cauſes within the Seals after Term, there the party has timely notice to ſhew cauſe; but when the decree is pronounced in Term-time, the patry, if the *ſubpæna* is made returnable the ſame Term, as it may be, has but a very few days left to ſhew cauſe againſt the decree, and is ſometimes ſtraitened to do it.

If the defendant ſubmits to the decree unleſs cauſe, then upon an affidavit of the ſervice of the *ſubpæna* to ſhew cauſe, and upon a certificate from the Regiſter that no cauſe is ſhewn, the plaintiff's counſel move to make the decree abſolute on the affidavit and certificate, which is a motion of courſe.

If upon a hearing the plaintiff doth not appear, the defendant upon making an affidavit of being ſerved with a *ſubpæna* to hear judgment at the plaintiff's ſuit (except the cauſe was ſet down at his requeſt) the plaintiff's bill ſhall be diſmiſſed with coſts.

Where there are croſs cauſes, they ſhall be brought on to a hearing together, if the anſwer in the laſt commenced cauſe be come in before the firſt cauſe is heard: But if there be croſs cauſes on bills exhibited by each of the parties, and both ſuits be publiſhed and ready for hearing; that party's cauſe that doth not ſerve proceſs, ſhall not come on at the ſame time with the other, except the other party conſents to it. And if ſeveral co-incident cauſes are brought to hearing at the ſame time, a decree may be againſt one who is no party to ſome of the bills. 2 *Chan. Ca.* 234.

A neceſſary defendant being beyond ſea, upon affidavit made thereof by plaintiff, and that he knew not whether he was alive or dead, (it was his father) he had an order on motion to proceed againſt the other defendants without prejudice,

and afterwards had a decree without bringing ſuch defendant to hearing. *Vern.* 487.

A bill was brought by the deviſee of lands to perpetuate the teſtimony of a will, and to eſtabliſh the will. Bill diſmiſſed with coſts. 2 *Will. Rep.* 162. [For more relating to this head, *vide* 2 *Vol. Abr. Eq.* (A.) 490.]

Rehearings and Appeals (*a*) *to Lord Chancellor*, &c.

(*a*) Appeal lies not to the Houſe of Lords, from a ſentence by delegates, or from a decree on the ſtatute of charitable uſes. 2 Vern. 118.

IF either party apprehends himſelf aggrieved by a decree, he may petition the *Chancellor* for a rehearing, in caſe the cauſe was heard before his Lordſhip; but if it was heard before the *Maſter of the Rolls*, then application may be either made to his Honour, by petition, for a rehearing before him, or to the *Chancellor*, by petition of appeal; but it is uſually to the *Chancellor*. And if the decree be made by one of the judges, deputed by the *Chancellor* to ſit in his abſence, then the party apprehending himſelf aggrieved, may alſo apply to the *Chancellor* by petition of appeal for a rehearing before his Lordſhip. And the petition is to be ſigned by two counſel, one whereof is to be of good note in court; or muſt have been counſel in the cauſe, ſhewing and ſtating the matter for a rehearing, and the reaſons why the party apprehends himſelf aggrieved by the ſaid decree, and ſignifying, that they conceive there is good cauſe for the ſame; upon which the court will, at any time before the decree is ſigned and inrolled, order the cauſe to be reheard: But the petitioner muſt depoſite ten pounds with the Regiſter, nine pounds ten ſhillings whereof is generally returned him, if he prevails in the rehearing, though the court ſometimes orders it to be divided; and as to the remaining ten ſhillings it

is the Regiſter's poundage, he having twelve pence in the pound for all money depoſited with him, on his repaying it. On a rehearing being ordered, the cauſe is commonly ſet down for a certain day on which it is to be reheard; and two days at leaſt before ſuch day, the petitioner is to leave for the *Chancellor* (or *Maſter of the Rolls*, if the application was to his Honour) a true copy of the decretal order appealed from, and alſo of the petition for rehearing; for which you pay five ſhillings on leaving the ſame.

Held clearly by *Lord Chancellor* that upon an appeal, either from the Rolls to his Lordſhip, or from him to the Houſe of Lords, no new matter not in iſſue ſhould be inſiſted on, *Trin.* 1710. *Prec. in Chan.* 295.—— but afterwards in *Trin.* 1718. The *Lord Chancellor* held, that on an appeal from the Rolls to his Lordſhip, the cauſe is open, and the party is at liberty to read new proofs, and offer what he can againſt the decree. *Ibid.* 496.—— *Gilb. Eq. Rep.* S. C. and *p.*—— The rule is, that on an appeal the whole caſe is open. *Trin.* 1725. *Sel. Ca. in Chan.* 24.—— *Vid. ibid.* 48.

An appeal from decrees made in the plantations lies only to the King in council 2 *Will.* 261.

It is in the diſcretion of the court whether or no they will grant a rehearing.—— And it is equally ſo, whether they will do any thing thereon. 3 *Will. Rep.* 8.

If a matter of fact be miſtaken at the hearing, *&c.* it is to be ſet right by rehearing, and not otherwiſe. 1 *Chan. Ca.* But if it be a ſmall miſtake, it is ſometimes rectified by petition to the *Lord Chancellor*, or *Maſter of the Rolls*, who heard the cauſe; praying that all parties, with the Regiſter, may attend with the minutes, and that his Lordſhip, or Honour, would rectify the

ſame:

ſame: On which an attendance is ordered; and the court make an order for rectifying the ſaid minutes, if they ſee cauſe.

But the granting a rehearing ſhall not ſtop or hinder proceedings on an order or decree appealed from, without the ſpecial order of the court for the ſame. *Ord. Chan.* 208.

In the caſe of *Howard* v. *Colley*, it was ruled, that on an appeal the whole caſe is open; but on a rehearing only ſo much as is petitioned againſt; and if all do not petition, it is only open to the petitioners. *Trin.* 11 *Geo.* 1.

No proof to be read upon a rehearing that was not read upon the hearing. *Vill* v. *Lane* 1726.

Matters of account admitted before the Maſter ſhall never be allowed upon an appeal. *Chatham* v. *Leigh* 1705, and *Mayor, &c. of Hertford* v. *The Poor of the ſaid town* 1713.

No appeal lies for coſts only. *Carr* v. *Parrall* 1727.

When a caveat is entered to prevent the inrollment of a decree, there ought to be a rehearing before an appeal.

None but parties are intitled to an appeal. *Vill* v. *Lane* 1726.

The court will not rehear a cauſe after a decree ſigned and inrolled, notwithſtanding the cauſe had been open ſince the inrollment. 2 *Chan. Rep.*

An agreement was ſigned by the parties, and by conſent made an order of court to ſubmit to ſuch decree as the court ſhould make, and neither party to bring an appeal; yet the cauſe was allowed to be reheard. 3 *Will. Rep.* 242. *Buck* v. *Fawcett.*

Sir *Geo. Downing* brought an appeal in Parliament, from a decree in *Chancery* by conſent, ſuggeſting, that though the Regiſter in drawing up the order, had drawn it as a decree by conſent,

and the minutes were ſo too; yet he never did conſent to ſuch decree, nor his counſel neither; or if they did, it was without his authority, and made affidavit of it; but the appeal was diſmiſſed. *Hill.* 1699. between *Downing* and *Cage*.

The Parliament being prorogued, you may proceed in the account in *Chancery*, notwithſtanding the appeal. *Vern.* 344.

No appeal to the Houſe of Lords from a ſentence by the delegates, or from a decree upon the ſtatute of charitable uſes. 2 *Vern.* 119.

New trial granted by the Houſe of Lords, 2 *Vern.* 378.

If a decree be *inrolled ſo that the cauſe cannot be reheard*, there is no remedy but by bill of *review*, which muſt be on error appearing on the face of the decree, or matters ſubſequent to the decree, as a releaſe, or a receipt diſcovered ſince. 3 *Will.* 371.

In the caſe of *Arthur Onſlow*, Speaker of the Houſe of Commons, *King*, Chancellor, on the *circumſtances of the caſe and the decree not being inrolled*, refuſed to diſcharge an order for rehearing at the diſtance of 24 years. 2 *Will. Rep.* 8.

If *after* hearing a witneſs is convicted of perjury, advantage may be taken of it on a rehearing. 2 *Vern.* 463.

On a *new* bill to carry a decree into execution, the court may vary what it thinks proper. *Vide Sel. Ca. in Chan.* 13, 14.

[For more concerning rehearing and appeals, *vide* 2 *Vol. Abr. Eq. p.* 81, 491. (B.)]

A petition of appeal to the Chancellor.

Between *A. B.* esq; and *C. D.* gent. executors of *C. B.* esq; } plaintiffs,

T. R. esq; - - - - defendant.

To the right honourable ——— *Lord High Chancellor of* Great Britain.

The humble petition and appeal of the defendant T. R.

Sheweth,

THAT your petitioner was in the year ——, and for several years afterwards, employed by the plaintiff's testator *C. B.* as his solicitor in law and equity, and also as his agent in divers other affairs, and particularly in getting the testator a customer or chapman for his place as ——, and in a suit which the testator prosecuted against one ——— for the recovery of a debt of about 1500*l.* and which was looked upon as difficult to be recovered.

That your petitioner behaved himself in all the said affairs honestly, diligently, and with good success, and to the great satisfaction of the testator.

That your petitioner about the —— of *April* ——delivered to the testator bills of particulars of his costs and charges, in which bills such business as your petitioner had done as his agent, as well as the law charges, were inserted and included, and in which bills your petitioner had brought to account all the sums of money which he had ever received from, or on account of the

teſtator; upon the delivery of which ſaid bills, the teſtator promiſed that your petitioner's bills ſhould be paid when the debt due from the ſaid —— was recovered.

That the ſaid ——— debt was recovered, in which recovery your petitioner had been very uſeful to the teſtator; but your petitioner's debt was not paid, and then the teſtator was pleaſed to propoſe to your petitioner, that your petitioner's bills ſhould be firſt peruſed and examined by Mr. —— and Mr. —— being perſons ſkilful in ſuch affairs, and that then your petitioner's debt ſhould be paid: To which propoſal your petitioner readily ſubmitted and complied; and they did accordingly peruſe and examine the ſame, and found that your petitioner had brought to account all the monies that he had received, but made ſeveral objections to ſeveral *items* in your petitioner's bill, which they reported to the teſtator, and informed and laid before him ſuch their objections, and their reaſons for making thoſe objections, leaving it to the teſtator's diſcretion, whether he would allow or diſallow of the ſame.

That the teſtator, after he had conſidered of the ſaid objections, and the reaſons of them, declared that he would not make any abatement of the ſaid bills on account of the ſaid objections, or to that effect.

That the teſtator, after he had ſufficient time to peruſe and conſider of the ſaid bills, and had cauſed them to be examined into and ſhewn to ſuch perſons as he thought fit, was pleaſed to come from his houſe at ——— to your petitioner's chambers on or about the ——— day of ———, when and where he ſigned and allowed of your petitioner's account, in the words and figures following, *I do hereby allow and approve of this account, and I do acknowledge that I am indebted*

debted to Mr. T. R. *upon the balance of account, the ſum of* ——— *as above. Witneſs my hand this* —— *day of* ———. *Witneſs* ———.

That your petitioner apprehended that the ſaid account was then cloſed, and your petitioner's property in the ſaid debt fixed and aſcertained.

And your petitioner ſheweth, that the only buſineſs your petitioner was afterwards employed in by the teſtator, was to oppoſe the proſecution upon a commiſſion of lunacy ſued out againſt him, upon which account there became due to your petitioner upon the balance, the further ſum of ——— for his fees and diſburſements; but before your petitioner received any ſatisfaction for his ſaid ſeveral debts, the teſtator died on or about the —— day of ———.

That upon the death of the teſtator, the plaintiffs were ſo far from making any objections or diſpute to your petitioner's ſaid two debts, that they, by Mr. ——— their ſolicitor, made your petitioner ſeveral promiſes that your petitioner's debt ſhould be paid and ſatisfied; but notwithſtanding the ſaid promiſes, and before your petitioner had begun or commenced any action at law, the plaintiffs in or about ——— term —— exhibited their bill in this honourable court againſt your petitioner, to ſet aſide the ſaid ſtated account, and to have your petitioner's bill taxed, and to have a general account of all monies received and paid, and to have an *injunction* to ſtay your petitioner's proceedings at law; but the plaintiffs did not by their bill charge any particular fraud or ill practice on your petitioner in or about the obtaining the ſaid ſtated account, nor ſhewed any reaſon why the ſame ſhould be ſet aſide, ſave only that they ſuggeſted by their ſaid bill, in general terms, that your petitioner's bills of coſts and charges were unfair and unreaſonable,

and

and that the teſtator was prevailed on to allow the ſaid bill, and to ſign the ſaid account by fraud and impoſition, and when the teſtator was not capable of judging rightly what he did, and within the time when the teſtator, by virtue of an inquiſition found and returned upon a commiſſion of lunacy, had been adjudged to be a perſon of ſuch unſound mind, memory and underſtanding, as to be incapable of managing himſelf or his eſtate.

To which bill your petitioner put in his anſwer, and thereby denied all manner of fraud and ill practice in obtaining the ſaid ſtated account, and inſiſted the ſame ought to ſtand, and not to be ravelled into; and as to the ſaid inquiſition found on the ſaid commiſſion of lunacy, your petitioner inſiſted that he was not bound thereby, being no party thereto, and that the ſame ought not to be allowed as evidence to conclude him; and that your petitioner had brought his action at law to recover his ſaid debt, where the matter of fact whether the teſtator was *compos mentis*, or not, was properly triable by a jury, and where the complainants might make their proper defence.

That iſſue being joined, witneſſes examined, and publication paſſed, the ſaid cauſe was heard before his Honour the Maſter of the Rolls on the —— day of ———, when his Honour was pleaſed to order and decree, that the ſaid ſtated account ſhould be ſet aſide, and referred it to a Maſter to tax your petitioner's bills of fees and diſburſements included in that ſtated account, as alſo his bill of fees and diſburſements delivered ſince the ſaid ſtated account.

By which decree your petitioner conceives himſelf aggrieved, ſo far as concerns the ſetting aſide the

the ſaid ſtated account, and the new taxing your petitioner's bills included therein.

Your petitioner therefore humbly appeals to your Lordſhip from that part of the ſaid decree, and humbly prays your Lordſhip to rehear the ſaid cauſe, and to appoint ſome ſhort day for that purpoſe.

And your petitioner ſhall ever pray, &c.

We humbly conceive that this cauſe is proper to be heard before your Lordſhip, if your Lordſhip ſhall think fit.

A. B.
C. D.

CHAP. IV.

Of diſmiſſions and decrees; and of drawing up, inrolling, executing, exemplifying, and reviving decrees.——And firſt of diſmiſſions.

A Diſmiſſion is the ſentence of the court, whereby the plaintiff's bill is ordered to ſtand diſmiſſed, and is adjudged unfit for the court to take cognizance of: Alſo it may be in many caſes where the court hath cognizance of the cauſe, yet finds no equity proper for the plaintiff's relief, and therefore diſmiſſes the plaintiff's bill.

And diſmiſſions are uſually prayed and procured upon motion, and had upon the defendant's anſwer and diſclaimer, and ſometimes on a plea or demurrer, or on the merits at the hearing; and not after examination of witneſſes before the hearing; though upon a diſcontinuance of proſecution,

cution, by ſpecial motion and order of court a diſmiſſion may be had.

Before appearance the plaintiff may obtain leave to diſmiſs his own bill; ſo after appearance, and before anſwer, or after anſwer and before the parties have examined witneſſes, the plaintiff may generally of courſe, on motion, have leave to diſmiſs his own bill with coſts. And if the plaintiff diſmiſs his own bill, or the defendant diſmiſs it for want of proſecution, the plaintiff muſt, by the late ſtatute for *Amendment of the law*, pay full coſts to be taxed by a Maſter. 4 & 5 *Ann. c.* 16.

A cauſe may be diſmiſſed for vexation by reaſon of a double proceeding, as if the plaintiff firſt brings an action at law, and then his bill in this court for the ſame thing, *&c.* though he may proceed here, his proceedings at law being ſtayed by *injunction*; and if the plaintiff forbear proſecuting his ſuit here, or does any thing which ſeems to make himſelf a judge of the matter in queſtion, theſe are cauſes of diſmiſſion.

As concerning elections to be made, where a man brings his action at law and his bill in equity for the ſame matter, defendant muſt firſt anſwer the bill, and then put the plaintiff to his election in which court he will proceed; and this is a motion of courſe, he has by the order ſerved on the clerk eight days, to ſhew cauſe againſt making his election. If he elects to proceed at law, his bill in equity ſtands diſmiſſed with coſts.

If he chuſes equity, then an injunction iſſues to ſtay his proceedings at law: This election is filed in the report office, and ſigned by plaintiff's clerk in court, and is the authority for making out the injunction.

But ſtill this election does not hold in all caſes; for if the ſuit in equity is not for the ſame matter,

ter, there ſhall be no election. If the bill is a bill of diſcovery, and no relief ſought thereon, there is no election; for perhaps from that diſcovery he may be able to proceed in law, and without it cannot.

Upon this head there ſeems to be a plain failure of juſtice, (which hitherto has never, as we know of, been taken notice of) as for example: Suppoſe the plaintiff elects to proceed in equity, and his bill upon hearing is diſmiſſed, either with or without coſts, all the benefit the defendant who is doubly vexed by it has, is only to have his coſts, and plead it in bar to any new bill brought againſt him for the ſame matter; (for a diſmiſſion upon an interlocutory order is not pleadable) but his injunction for ſtaying proceedings at law is gone by the diſmiſſion; and the plaintiff is in that caſe at liberty to proceed at law, which the court never intended, when they put him to his election. Now he elects to take his fate in equity, finds that court againſt him; and when he has done there, he may take another turn at law, which is a great hardſhip; and it were to be wiſhed, that the wiſdom and juſtice of the court would remedy it; for the order of election is, that the plaintiff is proſecuting at law and in equity for one and the ſame matter; and therefore he is called on by the juſtice of the court to elect in which court he will proceed; but ſtill he is not to proceed in both courts.

Plaintiff is not bound to make his election till defendant hath anſwered. 1 *Vern.* 103.

Where a plea is put in to a bill, though there is an anſwer, the bill cannot be diſmiſſed for want of proſecution, till the plea hath been argued. *Barnard.* 280.

A cauſe being ended by agreement or arbitration, without proceeding on the bill, order will be given to diſmiſs the bill.

A

A diſmiſſion may be upon the plaintiff's own prayer; and is often upon hearing the cauſe, where it appears that the merits thereof are improper for a court of equity.

And diſmiſſion upon hearing is ſometimes for want of parties, ſometimes becauſe the matter belongs to another court to determine; as to the courts of law, or eccleſiaſtical courts, or that the cognizance thereof belongs to another court of equity; as the univerſities, and cinque ports, *&c.* or for that the matter in demand is below the dignity of this court, either in reſpect of its value, as under ten pounds, or in reſpect of its nature, being in itſelf diſhoneſt, or accompanied with fraud, corruption, or oppreſſion, or having an evil tendency, or for want of equity, *&c.*

As to diſmiſſing bills for want of parties, the diſtinction ſeems to be this: Where the parties omitted are really intereſted, and ſuch as have a right by their anſwer to controvert the plaintiff's title, and draw the cauſe to a freſh examination, there the bill ought to be diſmiſſed with coſts; but where the parties omitted muſt be added merely for form, there the cauſe may be adjourned on payment of coſts of the day, and the bill amended, and proper parties added.

If a diſmiſſion be decreed upon a full hearing, and drawn up, ſigned and inrolled, it may not be altered by any motion or order afterwards made for retaining the cauſe, but only by a bill of review; nor ſhall a new bill be admitted but upon affidavit of new matter, (as in the caſe of a bill of review) and a ſpecial order of court made thereon.

Probable cauſe of ſuit may induce the court to ſpare coſts, when the plaintiff is diſmiſſed on the hearing; though if on ſuch diſmiſſion there appears

pears no ſuch probable cauſe, *&c.* the plaintiff commonly pays full coſts to be taxed.

Upon a diſmiſſion with full coſts, the coſts are to be taxed by the Maſter to whom the taxation is referred, and his report is to be had therein; and then without confirmation of the report, the ſame being filed with the Regiſter, you may have a *ſubpœna* for your coſts, upon which, if they are not paid, proceſs of contempt ſhall iſſue, as in other caſes: And where a bill is regularly diſmiſſed of courſe, or by order, for want of proſecution, *&c.* the ſame cannot be retained without ſpecial order of the court, which is ſeldom ordered without ſome extraordinary reaſon be given, and in that caſe the court orders the plaintiff to pay ſuch coſts to the defendant as they think proper.

You cannot apply to the court to diſmiſs a bill for want of proſecution till after the end of three terms, excluſive of the term wherein there was any proceeding; as putting in the anſwer, ſerving a *ſubpœna* to rejoin, filing a replication, and the like; and with regard to diſmiſſing bills for want of proſecution, ſee before *Vol.* 1. under the title *Replications and rejoinders.*

In caſe of a diſmiſſion, which was not upon hearing of the cauſe; if any new bill be irregularly brought, the diſmiſſion is to be pleaded: And after reference and report of the contents of both ſuits, and conſideration of the cauſe of the former diſmiſſion, the court will order the retaining or diſmiſſion of the new bill, according to the juſtice and the nature of the caſe. And obſerve, that touching the cauſes of diſmiſſion and retainer, this court exerciſes a diſcretionary power therein. *Vide Ord. Chan.* 144. *Cary's Rep.* 76, 110, *&c.*

In

In caſe there be ſeveral defendants who defend the ſuit ſeverally, by different clerks in court, coſts of diſmiſion muſt be paid to as many defendants as have imployed their ſeveral clerks in court.

When, by order of this court, proceedings are had at law, as to try the iſſue, or the like, the party ſhall have his coſts at law allowed, as well as his coſts in this court. But upon a diſmiſſion of a bill here, whilſt the defendant proſecuted at law upon a bond, this court refuſed to give him his coſts at law, becauſe he ſhould recover them there.

Bill diſmiſſed, principally becauſe the plaintiff did not come into this court till after verdict and judgment. 2 *Chan. Ca.* 95. *Lee* againſt *Boles.*

Where a bill is diſmiſſed, no motion will be heard to retain it till coſts of the diſmiſſion be paid and certified by the attorney on the other ſide.

If the plaintiff delays his cauſe, and defendant moves to diſmiſs the bill, the court will not always grant this, according to the circumſtances of the caſe; but ſometimes will only order the plaintiff to ſpeed his cauſe.

Suits grounded on nuncupative wills, long leaſes tending to perpetuities, eſtates purchaſers, brokages for marriages, agreements for play or wagers, bargains for offices contrary to the ſtatute of *Edw.* 6. or for ſimony, or uſury, are diſmiſſed on motion, if they take up the whole matter of the bill, and no ſpecial cauſe to induce the court to allow procedure.

If plaintiff diſavows, the bill is diſmiſſed. *Chan. Ca.* 348.

Diſmiſſion upon an election to proceed here or at law, is not peremptory, but plaintiff after failure at law, may bring a new bill. 2 *Vern.* 32.

When

When a cauſe is brought to hearing, after iſſue joined and witneſſes examined, the court ſometimes makes a decree for the plaintiff, as to ſome points contained in his bill, but diſmiſſes his bill as to other points, and ſometimes orders the plaintiff to pay coſts to the defendant, for ſo much of the bill as is diſmiſſed, to be taxed by the Maſter; and ſometimes orders the defendant to pay the plaintiff coſts to be taxed, for ſo much of the bill as is decreed for him, as the court ſhall adjudge proper.

Where a plea and anſwer are put in to a bill, no diſmiſſion can be for want of proſecution till the plea is argued. *Barn. Rep. in Chan.* 280.

And ſometimes, upon a full hearing, the court will, upon pronouncing a decree for the plaintiff, order the defendant to pay him his coſts to that time. And if the court refers matters to a Maſter, as accounts to be taken, or the like, between plaintiff and defendant, the court commonly reſerves coſts in thoſe caſes till after the Maſter hath made his report: And after the Maſter hath made his report, the court gives either party liberty to apply for farther directions, as they ſhall think fit, whereon ſuch order ſhall be made as ſhall be juſt: In which caſe, after the Maſter hath made his report, and the ſame is abſolutely confirmed by the court, either party may apply by petition to the *Lord Chancellor* to have the cauſe heard on the Maſter's report, as to coſts, which is always granted of courſe, and that order being drawn up and ſerved on the adverſe clerk in court, and the cauſe being ſet down by the Regiſter to be heard upon the Maſter's report, the court will order coſts to be taxed by the ſaid Maſter, and paid by ſuch party as the court ſhall think proper.

Bill of revivor brought by a wrong deſcription of plaintiff, a ſecond bill brought, and demurrer thereto.—The maſter on reference reports they are for the ſame cauſe, but in different rights; the former to be diſmiſſed with coſts generally, not with 20*s.* coſts. *Barnard. Chan. Rep.* 83, 4.

Of decrees. (*a*)

(*a*) The juriſdiction of the Maſter of the Rolls having been objected to; By Stat. 3. Geo. 2. c. 30. the decrees made and ſigned by his Honour are good and valid decrees of the High Court of Chancery, ſo as they be not inrolled till they are ſigned by the Lord Chancellor.

A Decree is the final order of this court determining the right of the matters in queſtion, upon a full hearing, agreeable to equity, and ordering the parties accordingly.

And it is pronounced in open court by the *Lord Chancellor*, or *Keeper*, or *Maſter of the Rolls*; and it is minuted down by the regiſter then ſitting in court, who afterwards uſually reads the ſame to the court, and if any miſtake do thereupon appear, the ſame is forthwith rectified.

A decree may be altered upon a proper application in the term it is pronounced, without a rehearing. *Vaughan* againſt *Blake*, 3d of *May* 11 *Geo.* 1.

Afterwards the regiſter being applied to, and a brief of the pleadings being left with him at the office; he thereupon draws up the decree in form, according to the pleadings and minutes in the cauſe, and commonly iſſues a note to the adverſe party, that he may take a copy, if he thinks fit, and attend him before the ſame is paſſed. But uſually the ſolicitor or clerk in court for the defendant, ſoon after the decree is pronounced, and before the ſame is drawn up by the regiſter, marks the regiſter's book for a copy of the order, and as ſoon as the regiſter has drawn up the order, and the other ſide hath peruſed and returned it to the regiſter, he makes a copy thereof for the defendant, and the defendant having returned his copy,

copy, the regiſter will grant a note of the time when he will paſs the ſame, a copy whereof is uſually ſerved on the adverſe party.

And if the regiſter do alter or not purſue the minutes, then, and then only, the court may be applied to, to have the order ſettled according to the minutes.

The decree being paſſed, is to be left with the entering regiſter to be entred within —— months, or elſe you will be obliged to obtain an order that the ſame may be entred *nunc pro tunc*; after which it may be ſigned and inrolled: And until it be ſigned and inrolled, it has only the force of an interlocutory order; and is not final, but may be altered upon a re-hearing, or ſometimes upon motion or petition.

It is a rule, that *when a decree is entred by conſent*, the *merits* after ſhall never be inquired into, unleſs there be an objection that the word *conſent* be ſtruck out of the order. *Vide* 2 *Vol. Abr. Eq.* 279. *cap.* 31. *Ca.* 1.

If after pronouncing a decree, a caveat be entered by either ſide, to ſtay the *ſigning* and *inrollment* of it, the caveat ſtays the *ſigning* and *inrolling* for twenty-eight days after preſenting the decree to the *Chancellor* to be *ſigned* and *inrolled*; and notice given by his lordſhip's ſecretary to the adverſe clerk in court. *Vide* 1 *Will. Rep.* 609.

And no decree, or diſmiſſion, ſhall be preſented to the *Lord Chancellor* or *Maſter of the Rolls* to be ſigned, until the ſame be ſigned by the ſix clerk in the cauſe, or his deputy.

And if any decree, diſmiſſion or injunction be made or granted by any of the *Judges* ſitting in *Chancery*, it muſt be ſigned by them, or ſuch of them, as ſhall make the ſame, and after by the *Chancellor*, before it be effectual. *Vide Ord. Chan.* 48, 56.

Obſerve that every decree, *&c.* muſt, before inrollment, be ſigned as aforeſaid.

And decrees, and diſmiſſions made at the Rolls, or at *Weſtminſter*, on ſuch days as the *Chancellor* is not preſent, being drawn up, are firſt to be ſigned by the *Maſter of the Rolls*, or the *Judge*, that ſat at the hearing of the cauſe, and then preſented to the *Lord Chancellor* to be by him likewiſe ſigned; which done they may be inrolled.

By the ancient practice of the court, there was no time limited for ſigning and inrolling a decree: But now the decree is to be ſigned within ſix months after the laſt order made; if afterwards, it is petitioned for.

Note; An order may be obtained either upon a motion, or petition, to ſign and inroll a decree *nunc pro tunc*; but it is uſually done upon petition.

It is conceived ſuch an order ſhould be paſſed, and entered with the regiſter, the proper repoſitory for all theſe orders; and tho' it is never done, yet a caſe may fall out, where it may be of fatal conſequence to the party; for ſuppoſe that one of the errors aſſigned by the bill of review ſhould be, that by the ancient rules and practice of the court, the decree is to be inrolled by ſuch a time, and yet upon the face of the inrollment it appears to be inrolled afterwards without any leave or order of the court for its being ſo; (for the day of ſigning the decree always appears on the face of it) and if it falls out that there is no order entered with the regiſter to inroll the decree *nunc pro tunc*, how will ſuch an error or miſtake be got over, or ever cured? Therefore it were to be wiſhed, that all theſe orders to ſign decrees *nunc pro tunc*, were entered with the regiſter, to obviate a fatal error which one time or other may fall out.

Much leſs can an order ſigned by the Maſter of the Rolls, to ſign and inroll a decree, when the

the time was elapſed, *nunc pro tunc*, be thought a ſufficient reaſon for the Lord Chancellor to do it; becauſe it is his hand alone that gives ſanction to it: The decree, when inrolled, is a decree of the court, though it is made at the Rolls, it is nothing; and the concluſion is, it is therefore this day (that is to ſay) ſuch a day and year, adjudged and decreed by the Right Honourable, &c. and by the power and authority of the high and honourable court of *Chancery* ordered, adjudged and decreed ſo and ſo.

And how is it poſſible for an inferior officer, as the Maſter of the Rolls is, to direct the ſuperior officer to ſign and inroll the decree? or how the great ſeal can juſtify the doing of this by any authority but their own, where it is ſolely lodged, deſerves conſideration.

No original bill can vacate a decree *ſigned* and *inrolled*. *Gilb.* 185.

A decree being pronounced, and defendant dying ſoon after, the court may be moved to have it inrolled nevertheleſs, for it may be compared to a judgment at law, which if given before, may be entered up after the party's death; and the court has ordered decrees in this manner to be inrolled. 2 *Chan. Ca.* 227. *Nelſon's Rep. in Chan.* 169. S. P. 3 *Chan. Rep.* 73. S. P.

When the party is committed, or brought in by a *ſerjeant at arms*, for breach of a decree, he is not to be inlarged until he hath performed the decree in all things that are to be preſently done, and alſo given ſecurity by recognizance with ſureties, as the court ſhall order, to perform the other part of the decree (if any be to be performed) at future days and times appointed by the decree.

The decree from the time of pronouncing is binding, and an act of the court; all the reſt is a ſort of miniſterial or clerical act.

Decrees of this court are equal to judgments at law, and their execution as effectual, or more ſo. —— And real priority, and not relation to the firſt day of a term muſt give preference of payment.——An executrix in her anſwer confeſſing juſt debts demanded by the bill, can't be ſaid to give preference *per fraudem*, as ſhe only exerciſes the power lodged in her, and which the courts of law permit her to uſe.——This court will therefore injoin againſt judgments ſubſequent to its decrees. *Morris* v. *The Bank of England*, *Caſes in Eq. temp.* Talbot 217, *&c.*

A decree againſt an executor was preferred to a judgment at common law againſt him, upon its being prior in time. *Prec. in Chan.* 79.

An original bill, brought to ſet aſide a decree for *Alimony*, confirmed upon appeal in the Houſe of Lords, the huſband offering to be reconciled; bill retained, but the decree not to be compleatly vacated, and the wife at liberty to reſort to it if uſed ill by the huſband. *Finch* 153.

If a ſum be liquidated at the filing of the bill, or before, the court will decree intereſt, where the plaintiff is neceſſitated to come here. *MSS. Ca. in Chan. Anon. Paſc.* 8 *Annæ.*

Decrees or diſmiſſions being ſigned and inrolled, cannot afterwards be varied or altered by the court, (except by bill of review) but you muſt in that caſe appeal to the Houſe of Lords for relief, ſo as to vary ſuch decree or diſmiſſion.

If the decree is for a foreclоſure, or for payment of a legacy and intereſt, or for an account of a truſt; or for any other matter where an intricate account is thereby directed to be taken, and by the pleadings and proofs already taken in the cauſe; you cannot make out a regular charge on the defendant, without farther inquiry; then exhibit interrogatories before the Maſter for examining

mining the defendant, or any of the parties directed by the decree to be examined, and get their examinations returned as ſoon as poſſible, and then make out your charge.

And if there are a great many parties, ſo that you cannot conveniently ſerve them in the country, then you may, on affidavit and motion, obtain an order that ſervice of the order *niſi* on the clerk in court may be good ſervice.

If the decree is perſonal, as for payment of the money reported due on taking the account, then make out a *writ* of *execution* of the decree and Maſter's report ſigned and inrolled, and ſerve it on the party. And in caſe of non-performance, then iſſues proceſs of contempt.

But if the decree is for a foreclоſure, or for any other purpoſe where it is neceſſary to ſign and inroll the decree, then after the report is confirmed, and the money not paid, you get the decree ſigned and inrolled; and after that a writ of execution thereof, if it be neceſſary, and ſerve the party with a copy thereof, which if he refuſes to perform, you make out the uſual proceſs againſt him as in other caſes.

When a decree of foreclоſure is made, the time for redeeming muſt be computed according to kalendar months, and not according to lunary ones. *Barnard. Rep.* 324.

After a decree againſt a corporation for a ſum of money, and a *diſtringas* iſſued againſt them, the court refuſed to give them any time, or to let them be examined on interrogatories; otherwiſe if a *diſtringas* on mean proceſs. 2 *Vern.* 395.

Private members made liable where corporation had no goods. *Ibid.* 396.

On a bill brought to have the benefit of a *former* decree, plaintiff cannot examine witneſſes *formerly* examined, or *new* witneſſes, but the court

may examine into the juſtice of the *former* decree upon the proofs already made in the cauſe. *Ibid.* 409.

Subſequent incumbrances may redeem the *firſt* mortgagee tho' the decree had foreclоſed the mortgagor, and an account taken under the decree.—Defendant pleaded the decree *ſigned* and *inrolled*, and the taking the account in an adverſary way, and denied that he had any notice of plaintiff's incumbrances: But plea over-ruled. 2 *Vern.* 663.

On mortgages and ſecurities carrying intereſt, the Maſter is to compute intereſt to the time the money is appointed to be paid by his report, after which it will carry intereſt for the whole ſum mentioned in his report, including principal, intereſt and coſts.

And it is the practice of this court, upon an account decreed, that from the time the Maſter ſhall make his report, the whole ſum therein ſhall carry intereſt. And Sir *John Trevor*, Maſter of the Rolls, ſaid, If an account is ſtated by the parties, it ſhall carry intereſt from the time of ſtating. *MSS. Ca. in Chan. Trin. 7 Ann.*

All parties to the ſuit or decree ſhall be bound by the decree, if they are of full age, *compos mentis*, &c. And where any come in *pendente lite*, and while the ſuit is in proſecution, regularly the decree bindeth them. 1 *Chan. Ca.* 150.

After a decree is pronounced, matters of account to perfect it may be examined by a Maſter, *&c.* But nothing may come under examination againſt the foundation of the decree.

If a decree be to account, and the parties die, if the executors or adminiſtrators do not revive within ſix years, this is not within the ſtatute of limitations. 1 *Will. Rep.* 742.

If an adminiſtrator obtains a decree, that he, his executors, or adminiſtrators may redeem a mort-

mortgage, and he dies inteſtate before inrollment of the decree, it ſhall not afterwards be inrolled for the benefit of his adminiſtrator, for the firſt adminiſtrator's title is gone. 2 *Chan. Ca.* 248.

A decree does not bind the legal intereſt of the eſtate, but the perſon only, who may be ordered to convey and aſſure the intereſt; but it ſo far affects the title to lands and goods, that by ſequeſtration and injunction the court does diſpoſe of the poſſeſſion to the party to whom of right it belongs.

Where a decree concerns lands even of leaſes for years, it muſt be entered with the regiſter within ſix months, or elſe ſhall not prejudice purchaſers.

And he that purchaſes after a bill exhibited againſt the vendor, does it at his peril. 2 *Chan. Ca.* 223.

Decree for huſband and wife in right of the wife; if the huſband dies, his widow, not the executors, ſhall have the benefit of the decree. 1 *Chan. Ca.* 27.

If there be an order, that one ſhall ſtand committed to the *Fleet* for breach of a decree; yet the warden cannot take, and impriſon him, but a writ ought to be awarded for taking him. *Danv.* 176.

Where the plaintiff had a decree *niſi*, and did not appear, *His Honour* looked upon it as giving up of the judgment, and diſmiſſed the bill with coſts. *Sel. Ca. in Chan.* 6. 50.

Decrees of this court take effect from the time they are pronounced, and the death of the parties ſhall not hinder the inrollment in a convenient time. *Finch* 169.

Lands ſettled on truſtees for raiſing portions for daughters, on a bill for a ſale, the court decreed the heir to join in the ſale, tho' he has no legal intereſt. 2 *Vern.* 99.

In

In the drawing a decree, it is not ſufficient for the regiſter to recite the bill and anſwer, and then add, that upon reading the proofs, and hearing what was alledged on either ſide, it was decreed ſo and ſo; but the facts which were proved, and allowed by the court as proved, muſt be particularly mentioned in the decree; otherwiſe, if a bill of review be brought, thoſe facts ſhall be taken as not proved; for elſe a decree could not be reverſed by a bill of review. 1 *Vern.* 214. 2 *Chan. Ca.* 161. S. P.

Decree will ſometimes bind perſons not parties or privies, as four named to defend for a pariſh, the decree will conclude the inhabitants; ſo in caſes of incloſures of common, ſuits to ſettle the cuſtoms of a manor, *&c.* a decree will bind ſome tenants who are not parties, and others who oppoſe it; otherwiſe ſuits would be endleſs; if, where there are ſuch numbers, all muſt be parties, there would be perpetual abatements, and no right could be done. 1 *Chan. Ca.* 48, 272. 2 *Vern.* 103, 184. *Caſes in Eq. Abr.* 163.

If there are two executors, and one of them by decree is prohibited to receive any more money, or meddle further with the teſtator's effects, and a mortgagor to the teſtator, who was preſent at the hearing and pronouncing of the decree againſt him, he muſt pay it over again. 1 *Vern.* 57, 122.

Though it be a rule not to found a decree upon a ſingle evidence againſt a defendant's anſwer, yet it has been over-ruled, where a fraud was plain, and conſiderable. *Ayl.* 69.

Decree to account to the firſt adminiſtrator, the ſecond may carry it on. *Vern.* 25.

Equity will not decree an award, unleſs it be of all matters referred. 1 *Chan. Ca.* 186.

A decree, whether inrolled or not inrolled, is pleadable. 1 *Vern.* 310.

Matters

Matters aſſigned for error in a decree muſt appear in the decree itſelf; for being inrolled, it is ſuch a record as muſt be tried by itſelf. 1 *Chan. Ca.* 54.

If a feme ſole exhibits her bill, and during the proceedings marries, and no notice is taken of it, but the cauſe proceeds, and there is a decree for the defendant; this will not be a ſufficient cauſe to reverſe the decree, becauſe no error appears in the decree, only a matter which ſhould have been pleaded in abatement, and of which the defendant alone might have taken advantage. 1 *Chan. Ca.* 231.

The Lord Chancellor for the time being will inforce the execution of decrees, though made by a prior Lord Chancellor; and though they are alledged to be unreaſonable, yet will aſſiſt with the utmoſt proceſs of the court till they come regularly before him to be reverſed. 2 *Chan. Rep.* 127.

Theſe are made by the clerk in court in the cauſe, and ingroſſed on parchment, ſtamped with double five ſhillings, each ſkin to contain ten ſheets.

[For more concerning decrees, *vide* 2 *Vol. Abr. Eq.* 279, 280, 281.]

The form obſerved in drawing a decree.

Lord Chancellor. *Friday* the 9th day of *March* 1743. and in the 17th year of the reign of his Majeſty King *George* the ſecond. Between *A. B.* plaintiff, *C. D.* defendant.

'THIS cauſe coming yeſterday, as alſo on 'this preſent day, to be heard and debated 'before the Right Honourable the Lord High 'Chancellor of *Great Britain*, in the preſence of 'counſel learned on both ſides, the ſubſtance of 'the plaintiff's bill appeared to be [*Here recite 'the bill briefly.*] Therefore that the ſaid defen-'dant may account, *&c.* [*The prayer of the bill.*] 'and to be relieved is the ſcope of the plaintiff's 'bill: Whereto the counſel for the defendant al-'ledged, That he by his anſwer admits, *&c.* '[*Here ſet forth the ſubſtance of the anſwer.*] '* *Whereupon*, and upon debate of the matter, 'and hearing the will of the ſaid *E. F.* the anſwer 'of the defendant, a paper-writing or account 'of the teſtator's hand-writing relating to his 'eſtate, marked No (1.) and the proofs taken in 'this cauſe read, and what was alledged by the 'counſel on both ſides, his Lordſhip declared, 'That, *&c.*' [*Here ſet forth the decree of the court.*]

* Here follow the words of the order, beginning at *Whereupon*; for where the depoſitions are read at the hearing, it is always ſaid upon reading the proofs, and alſo ſuch exhibits or deeds, if any read at the hearing.

But obſerve, that if a cauſe be heard upon bill and anſwer only, and the decree be thereupon made; then you ſay after the words coming on to be heard and debated before, *&c.* you ſay, 'upon 'the bill and anſwer in the preſence of, *&c.* '*Whereupon*, and upon debate of the matter, *&c.*

'[*as*

'[*as in the order*,] this court doth think fit, and 'ſo order and decree; and accordingly it is or-'dered, adjudged and decreed, that, *&c.*' [*Here inſert the decretal part of the order on hearing.*]

And if it be a *rehearing*, upon the order on hearing, then after reciting the order on hearing, ſay thus;——'with which ſaid order the ſaid de-'fendant being diſſatisfied, he petitioned his Lord-'ſhip for a rehearing of the ſaid cauſe, and to 'have the order rectified in ſeveral particulars; 'and thereupon, by an order bearing date, *&c.* 'it was ordered, that the ſaid cauſe ſhould be re-'heard the, *&c.* of, *&c.* upon the defendant's 'depoſiting ten pounds with the regiſter, [*as you 'find by the words of ſuch order.*] And the ſaid 'defendant having depoſited the ſaid ten pounds 'accordingly, and the ſaid cauſe coming on to be 'reheard, in the preſence of counſel, *&c.* the 'counſel for the defendant inſiſted that, *&c.* [*ſet-'ting forth the ſubſtance of the defendant's argu-'ment, as recited in the order of rehearing*,] where-'to the counſel for the plaintiff inſiſted that, *&c.* '[*Reciting what the plaintiff's counſel inſiſted upon, 'as mentioned in the ſaid order of rehearing.*] '*Whereupon* this court did declare and decree, '*&c.*' [*according as it is expreſſed in ſuch order of rehearing.*] And if upon the rehearing, the for-mer order be confirmed, ſay, —— 'Whereupon, 'and upon debate of the matter, and hearing 'what could be alledged by counſel on both 'ſides, this court declared, that the decree for-'merly pronounced in this cauſe was juſt, and 'did accordingly order that the ſame ſhould 'ſtand, *&c.*' [*as it is in the order.*]

In drawing up all diſmiſſions made upon the hearing of a cauſe, you uſe the ſame words of courſe as you do in drawing up the decrees.

But

But towards the bottom or end of every decree or diſmiſſion you draw up, in the laſt ſheet upon the left hand you write theſe words, *viz.*

It agrees with the records, orders and report, and is examined by

A. B. for the plaintiff.

Which *A. B.* is the plaintiff's Six clerk, if drawn up for the plaintiff; but if drawn up for the defendant, then the defendant's Six clerk is to ſign it: But if there be only one order, you ſay only *order*; and if no *report* in the cauſe, you leave the ſame out.

After ſo ſigned, the bag-bearer carries the ſame to the ſecretary of the decrees, and if no *caveat* is entered by the defendant with him againſt ſigning the decree, or diſmiſſion, the ſame is ſigned by the *Lord Chancellor*, and alſo by the *Maſter of the Rolls*, if he made the decree; otherwiſe there is no occaſion for his Honour's ſigning it.

Of inrolling decrees.

AS ſoon as the decree is ſigned by the *Maſter of the Rolls*, (which he always does, if he pronounced the decree) and alſo by the *Lord Chancellor*, (which muſt be done in all caſes) you carry the decree to the *clerk of the chapel of the Rolls*, who according to the length of the decree, gives you as many parchment rolls as will inrol the decree; the clerk of the Rolls uſually writing upon the laſt ſheet of the decree, which is called the docquet, the day and year, and his name thereto, as a memorandum that he has delivered ſuch rolls; on which rolls the plaintiff's clerk in court, or his clerk or agent, ingroſſes the decree in

in a ſtrong ſecretary hand, (which before the late act of Parliament were always inrolled in a good chancery hand) which muſt be word for word as is in the docquet or decree; but there is no occaſion to inſert in the inrollment the *Maſter of the Rolls* or the *Lord Chancellor*'s names, but only to conclude with the end of the decree; and when the inrollment is carefully examined with the docquet of the decree, the plaintiff's clerk in court may carry both over to the *clerk of the Rolls chapel*, who will receive them, and give you a receipt for them, if you deſire it: in whoſe cuſtody both the docquet and inrollment are to remain for any one at any time to inſpect and take a copy thereof, if he requires it, upon paying the *clerk of the chapel* for the ſearch thereof, and alſo for ſuch copy.

Decree before inrollment thereof, ought to be delivered to the adverſe party, or his attorney, who is in eight days to return the ſame ſigned by the counſel of that ſide, or to make his objections to the draught. *Vin. Abr. tit.* Decree (D). *Ca.* 17. —— Q. if this is now the practice.

Of the execution of decrees, &c.

IN order to inforce obedience to a decree, you are firſt to get it ſigned and inrolled as aforeſaid, and then to ſerve the party, by ſhewing the writ of execution of the decree itſelf under ſeal of the court, and delivering a true copy thereof; and if he pays not obedience thereto, on affidavit of the ſervice thereof being filed, you may proceed to take out all the proceſſes of contempt, as *attachment*, *proclamation*, *commiſſion of rebellion*, &c. againſt him. And when the party is taken upon any of the ſaid proceſſes, he is, in ſtrictneſs, to be ſtraitly committed to priſon, and not

to be at liberty till he hath performed ſuch part of the decree as is preſently to be done, and given ſecurity by recognizance with ſureties, if the court ſhall ſo order, to perform the other part of the decree (if any be to be performed) at future days and times appointed.

And if the decree is for land, and the party continues obſtinate after his impriſonment, the court uſually grants an injunction for the poſſeſſion thereof to be yielded up to him for whom the decree was; and if this be diſobeyed, after it is ſerved, upon affidavit thereof, the court will grant a *commiſſion* to the ſheriff of the county where the lands lie, to put the party in poſſeſſion: And if need be, a *writ of aſſiſtance* may be had, which is directed to the ſheriff, commanding him to be aiding and aſſiſting in putting the party in poſſeſſion. *Vide* 3 *Will. Rep.* 379.

A ſequeſtration may be granted *in Scaccario*, as it has always been practiſed in Chancery, where a decree is for a perſonal duty, otherwiſe the juriſdiction of the court of equity would be to little purpoſe if it had not ſufficient authority to ſee its decrees executed. 2 *Freem. Rep.* 99.

If the decree is for payment of money, the writ of execution thereof, under ſeal, muſt be ſerved, and the money demanded, by the plaintiff himſelf; or any one elſe may ſerve the copy of ſuch writ on the party, only the plaintiff muſt be preſent to demand the money of the party: Or if the plaintiff is not, or cannot be conveniently preſent, he that ſerves the writ of execution of the decree, muſt have a letter of attorney from the plaintiff to demand and receive it.

And obſerve, that where a perſon ſtands out all proceſs of contempt to *ſequeſtration*, ſuch *ſequeſtration* is always granted to four or more commiſſioners to ſequeſter and take into poſſeſſion the real

real and perſonal eſtate of ſuch perſon, and to receive the rents, iſſues and profits thereof, until he has fully performed the decree or order of the court for which ſuch *ſequeſtration* iſſued, cleared his contempts, and the court ſhall take other order to the contrary.

If by the decree the defendant is to produce deeds and writings, or to attend and be examined upon interrogatories, the ancient rule uſed to be, to ſerve him with a copy of a writ of execution of the decree, and ſhew it him under ſeal, and at the ſame time to ſerve him with a warrant from the Maſter, to give him a reaſonable time to produce them: As where a man lived in *Northumberland*, he muſt have a longer time than if he lived near the town; and by the ancient rule no writ of execution was ever allowed to be made out till after the decree was ſigned and inrolled.

As this rule was anciently purſued, ſo it appears to be well grounded; becauſe the party had fair notice to produce them, and an opportunity of ſhewing to the court his reaſon for not doing thereof; whereas now nothing is more common than to take out two warrants from the Maſter, which are ſerved on the adverſe party's clerk; and on his not producing the deeds, and the Maſter certifying the default, a motion is preſently made to produce them in four days, or ſtand committed; and this order is ſerved on the party's clerk: And how it is poſſible for a man to produce them in four days, for a man that lives above a hundred miles off, is not eaſily to be accounted for.

It is tharefore contrived, that upon all theſe motions for a man to ſtand committed in four days for not attending to be examined, or for not producing deeds according to the decree, the queſtion (tho' this ſeems to be of courſe) ought

to be aſked, whether the party has been ſerved with a writ of execution of the decree, and with the Maſter's ſummons ſerved on the party perſonally; if he has, then on a certificate from the Maſter of their not being produced, or of his failure to attend and be examined, he is left inexcuſable; and in that caſe, he ought to ſtand committed, and as all commitments are grounded upon ſome offence or other, ſo it has been alſo taken, that the offence committed is not paying duty to the great ſeal; and the party, in this caſe, may proceed, if he pleaſes, by way of attachment.

But why a man's liberty ſhould be taken away, becauſe a Maſter upon a ſecond ſummons certifies his default, is not eaſily to be accounted for; notwithſtanding, this is a practice now uſed, and it is a very old, but a true ſaying, that no offence can be committed but where the great ſeal is ſhewed the party. Indeed this is not ſo in extrajudicial matters; as in the caſe of bankrupts or ideots, becauſe there they are never put under ſeal; and the offence in that caſe is for not yielding obedience to the order ſigned by the Lord Chancellor or Lord Keeper, to be ſhewn to the party againſt whom it is made.

The words of courſe of a writ of execution of an order.

To A. B. *and to all and every other perſon and perſons to whom the tenor of theſe preſents doth in any wiſe relate or concern, greeting: Whereas an order hath been lately made in our court of* Chancery *in the words following:*

The

The words after.

——*Therefore we ſtrictly injoin and command you the ſaid* A. B. *and all and every the perſons abovementioned, effectually to perform, fulfil and execute all and every the matters and things ſpecified and contained in the ſaid recited order, ſo far as the ſame do any way relate to or concern you, or either of you, according to the tenor and true meaning of theſe preſents; And hereof fail not at your peril.* Witneſs *ourſelf at* Weſtminſter, *the —— day of ——— in the ——— year of our reign.*

N. B. The words dotted under may be left out, if the order be ſuch as the defendant only is to perform.

If of a decree.

To A. B. *greeting: Whereas a certain final judgment or decree hath been lately made in our court of* Chancery *in the words following:*

The words after.

——*Therefore we ſtrictly injoin and command you the ſaid* A. B. *effectually to perform, fulfil and execute all and every the matters and things ſpecified and contained in the ſaid final judgment or decree, ſo far as the ſame any way relates to or concerns you, according to the tenor and true meaning of theſe preſents; And hereof fail not at your peril.* Witneſs, *&c.*

Before the report.

And whereas the ſaid Maſter, in purſuance of the ſaid order, made this report in the words following:

Short writ of execution of a decree.

GEORGE *the ſecond, by the grace of God, of* Great Britain, France *and* Ireland *king, defender of the faith, and ſo forth, To* A. B. *greeting:* —— *Whereas by a certain final judgment or decree lately made before us in our court of* Chancery, *in a certain cauſe there depending, wherein* C. D. *is complainant, and you the ſaid* A. B. *defendant, It is ordered and decreed, that you the ſaid defendant do pay to the ſaid complainant the ſum of* —— *as by the ſaid decree duly inrolled, and remaining as of record in our ſaid court of* Chancery, *doth and may more fully appear: Therefore we ſtrictly injoin and command you the ſaid* A. B. *that you do immediately pay or cauſe to be paid unto the ſaid complainant the ſaid ſum of* —— *according to the tenor and true meaning of the ſaid decree; And hereof you are not by any means to fail at your peril.* Witneſs *ourſelf at* Weſtminſter, *the* —— *day of* —— *in the* —— *year of our reign.*

Of exemplifying decrees, &c.

AN *exemplification* is the copy or example of a matter recorded or inrolled; as decrees, letters patent, depoſitions, *&c.* and is made out from the inrollment thereof, and ſealed with the Great Seal: And ſuch exemplifications are as effectual to be pleaded, or produced in evidence, as the decrees, *&c.* themſelves are.

And bills, anſwers, depoſitions, *&c.* matters of record, are exemplified, as well as decrees. But obſerve, that nothing but matter of record ought to be exemplified. 3 *Inſt.* 137. *li.* 5. 53.

—— And

—— And therefore all decrees, deeds, *&c.* muſt be inrolled before they are exemplified.

An exemplification of a deed may be ordered to be pleaded at law, where the deed inrolled cannot be produced. *Tot.* 89.

Proofs cannot be exemplified without bill and anſwer; and therefore if a bill be diſmiſſed for irregularity, or impropriety of juriſdiction, *&c.* as not proper for this court, or where it was by way of revivor, when it ſhould be by original bill, ſo that there never was any ſuch cauſe in court, the depoſitions in ſuch caſes cannot be exemplified, ſeeing the bill could not. *Vide* 1 *Chan. Ca.* 175.

Exemplifications of decrees are docquetted thus, *viz.*

In Chancery, 15 April 1740. *An exemplification of the inrollment of a decree in this honourable court, in a cauſe wherein* A. B. *is plaintiff, and* C. D. *and others are defendants; exemplified at the requeſt of,* &c.

Examined by us { R. H. / F. E. } *Maſters in* Chancery.

And certified thus, *viz.*

We the Maſters in Chancery, *whoſe names are hereunto ſubſcribed, have carefully examined the exemplification mentioned in the docquet on the other ſide, with the inrollment thereof; and do certify the ſame to be a true exemplification of the ſaid inrollment.*

R. H.
F. E.

And indorſed thus, *viz.*

An exemplification of a decree in Chancery, *in a cauſe there, wherein,* &c. *exemplified at the requeſt of,* &c.

And in the like form, an exemplification may be of the bill, *dedimus*, anſwer, replication, commiſſion to examine, interrogatories, and depoſitions, *&c.* as follows, *viz.*

Bill. GEORGE, *&c. To all perſons to whom theſe preſents ſhall come, greeting: We have inſpected a certain bill of complaint exhibited before us in our court of* Chancery, *remaining filed and as of record in the ſaid court, in the words following.*

Dedimus. *We have alſo inſpected our commiſſion with the indorſement thereon, directed to certain commiſſioners to take the anſwer of the aforeſaid* C. D. *and* E. F. *to the ſaid bill, likewiſe remaining filed in our ſaid court, in the words following.*

Anſwer. *We have alſo inſpected the anſwer of the aforeſaid defendants, taken by virtue of the aforeſaid commiſſion, and returned into our ſaid court with our ſaid commiſſion, remaining filed in our ſaid court, in the words following.*

Replication. *We have moreover inſpected the replication of the aforeſaid* A. B. *to the anſwer of the aforeſaid* C. D. *and* E. F. *remaining filed as of record in our ſaid court, in the words following.*

Commiſſion. *We have likewiſe inſpected our writ directed to certain commiſſioners to examine witneſſes with the ſchedule of oaths thereto annexed, between the aforeſaid parties, with the indorſement thereon made, remaining as of record in our ſaid court, in the words following.*

Interrogatories. *We have likewiſe inſpected certain interrogatories on the part of the ſaid* A. B. *complainant againſt the aforeſaid* C. D. *and* E. F. *defendants, exhibited before*

fore the ſaid commiſſioners, remaining as of record in our ſaid court, in the words following.

And laſtly, we have inſpected the depoſitions of certain witneſſes taken and examined before the ſaid commiſſioners on the behalf of the ſaid A. B. *complainant, againſt the aforeſaid* C. D. *and* E. F. *defendants, by virtue of our aforeſaid commiſſion, and returned into our ſaid court with the commiſſion and interrogatories aforeſaid, and there remaining as of record in our ſaid court, in the words following.* Depoſitions.

Which ſaid bill, and the commiſſion to take the ſaid anſwers and indorſement thereon, and alſo the ſaid anſwers, replication, commiſſion to examine witneſſes, and indorſement thereon, with the ſchedule of oaths thereto annexed, interrogatories and depoſitions of witneſſes, we have at the requeſt of the ſaid A. B. *exemplified by theſe preſents, and in teſtimony thereof have cauſed theſe our letters to be made patent.* Witneſs *ourſelf at* Weſtminſter, *&c.* Concluſion.

GEORGE *the ſecond, &c. We have inſpected the inrollment of a certain final judgment or decree lately made before us in our court of* Chancery, *and remaining as of record on the rolls of the ſaid court, in the words following.* Decree.

We therefore at the requeſt of the ſaid complainant have exemplified the ſaid final judgment or decree by theſe preſents, and in teſtimony thereof have cauſed theſe our letters to be made patent. Witneſs, *&c.* Concluſion.

Of reviving decrees, &c.

BILLS of revivor of decrees, and other proceedings, are neceſſary where a ſuit happens to be diſcontinued, which is generally by reaſon

of the death either of the plaintiff or defendant, before the decree inrolled.

Where a decree is inrolled, and a party dies, or a female plaintiff marries, decree and proceedings muſt be revived by a *ſubpæna ſcire facias*, though in caſe of a decree inrolled a revivor by bill hath been allowed. 1 *Chan. Ca.* 37.

But where the decree is not ſigned and inrolled, a bill of revivor muſt be brought.

And it is ſaid, where one can revive by a *ſubpæna ſci' fa'*, it is in their election to do it either by that proceſs, or by bill of revivor: But where after the decree there have been other proceedings, which cannot be revived by the ſaid *ſubpæna*, this ſure muſt be done by bill. *Vide* 2 *Chan. Rep.* 67.

If the parties that would revive the decree inrolled, be in privity of blood to the firſt parties, *viz.* as heirs; or in privity of contract, as executors or adminiſtrators, they may revive it by *ſubpæna ſci' fa'*.

Where the decree was obtained againſt the anceſtor, and his heir does not claim under that title, but by virtue of another title paramount; as where an eſtate is decreed againſt a man, and his heir inſiſts his father had not title thereto, or was only tenant for life thereof, the decree can never be carried into execution againſt him; he is at liberty to controvert the juſtice and validity of the decree, and may make a new defence from what his anceſtor did, and vary his caſe as he ſhall be adviſed, and the parties go into new examination of the matter, and hear the cauſe *de novo*; and the court judges whether the decree is right or not, and may affirm or reverſe it at their pleaſure.

But where one man obtains a decree againſt another, for a real eſtate, and the party dies before the plaintiff is put in poſſeſſion; in that caſe, if the heir at law claims the eſtate by deſcent under his

his anceſtor, or as deviſee under him, he ſhall never controvert the juſtneſs of the decree, though his anceſtor ſhould have miſtaken his defence; nor ſhall he be at liberty to make a new defence, or enter into new proof, ſo as to overthrow the former decree; eſpecially when it appears to the court that the decree has been of an ancient ſtanding.

If an adminiſtrator obtains a decree, but dies before inrollment, the adminiſtrator *de bonis non* may revive this decree within the equity of the ſtat. 30 *Car.* 2. *c.* 6. *Owen* and *Curſon*, 2 *Vern.* 237.

This *ſubpæna* is obtained either on motion or petition, and muſt be ſerved two days at leaſt before the return; in all other reſpects the ſervice is like that of a *ſubpæna* to anſwer. And on the return of the *ſubpæna*, if no cauſe be ſhewn to the contrary, the decree will, upon affidavit of ſervice, and a motion to that purpoſe, be ordered to ſtand revived.

But if there be neither privity in blood, nor privity in contract, the decree or cauſe muſt be revived by an original bill, and not by *ſci' fa'*, or bill of revivor. And therefore an aſſignee, or a deviſee, cannot have a bill of revivor, being in nature of purchaſers only. *Vide* 1 *Chan. Caſes* 122, 174.

On an original bill in nature of a bill of revivor of a decree, a deviſee ſhall have the ſame advantage of the decree as an heir or executor. 1 *Vern.* 548.

Alſo a bill of revivor lies not upon a decree of a long ſtanding; but in ſuch caſes an original bill is to be exhibited, and the decree to be ſet forth as evidence. 1 *Chan. Caſes* 216.

A decree was ſigned and inrolled, omitting part of the matter decreed, and the defendant being dead,

dead, (ſo that there was no helping it by motion) a bill of revivor was brought to revive (as was alledged) the part of the decree omitted, though in truth it extended to the whole decree. To this the defendant pleads, that the decree being inrolled, a bill lay not, but a *ſubpœna ſci' fa'*. But the plea and demurrer were over-ruled; and it was held that a *ſci' fa'* would only have revived the decree, and the proceedings before it, but not thoſe afterwards. 1 *Chan. Caſes* 37.

A bill of revivor was brought where there had been ſome proceedings touching coſts after the decree, and adjudged good. 2 *Chan. Rep.* 67.

No bill of revivor cannot be brought, where it relates to coſts only, (unleſs the coſts are taxed, and a report made in the life-time of the party) for this is a perſonal action, and *actio perſonalis moritur cum perſona.* But if by the decree the party is to pay a ſum of money, or if a duty is decreed, or if he is to deliver over a bond or deed or writing, or if any thing is annexed to the decree beſides coſts, the ſuit may be revived.

And yet a bill of revivor lies not to revive a decree made for coſts only. *Ibid.* 195 and 246. and 2 *Chan. Caſes* 7.

And it is ſaid, no defendant, or any other who repreſents him, can or ought to revive in caſe of an abatement happening before the decree be ſigned and inrolled. 2 *Chan. Rep.* 195.

CHAP.

CHAP. V.

Of reviewing and reverſing decrees.

WHEN a decree comes to be reverſed on a bill of review, it ought to be either becauſe it was unjuſt in matter of law ariſing within the body of the decree, or proceedings in the cauſe, or for that the court wanted, or exceeded its juriſdiction.

As in the caſe of bills of revivor, ſo alſo in bills of review, none but ſuch as are parties, or privies, can commonly bring them; but in ſome caſes, where a man's intereſt is affected, or he is grieved by a decree, he may have this bill; as where a pariſh was ſued, and four of the pariſhioners named only to defend, another pariſhioner may bring this bill. 1 *Chan. Caſes* 272.

As the end of a bill of review is to reverſe a decree formerly made; in order to proceed therein, firſt a copy of the decree, after it is ſigned and inrolled, is to be procured, and then reciting the former proceedings, as they are recited in the decree, you are to ſet forth the party's caſe, and aſſign the reaſons why the decree ſhould not be binding, but reverſed as for error in law, *&c.* And this bill cannot regularly be brought upon any matters in fact, or matters of record than the decree itſelf; yet if there be oath made of the diſcovery of new matters, which could not poſſibly be had or uſed at the time when the decree paſſed, a bill of review may be exhibited by leave of the court, but not otherwiſe. *Vide Toth.* 42. *Gilb.* 184. And by a late order made the 7th of *October* 1741. no ſupplemental or new bill, in nature of a bill of review grounded upon any new matter diſco-

diſcovered or pretended to be diſcovered ſince the pronouncing of any decree of this court, in order to the reverſing or varying of ſuch decree, ſhall be exhibited without ſpecial leave of the court firſt obtained for that purpoſe; and unleſs the party exhibiting the ſame do firſt depoſit with the regiſter of this court ſo much money, as, together with the depoſit, by the rules of this court to be made on obtaining a rehearing of the cauſe or cauſes wherein ſuch decree was pronounced, will make up the ſum of fifty pounds, as a pledge to anſwer ſuch coſts and damages as ſhall be awarded to the adverſe party, in caſe the court ſhall think fit to award any at the hearing of the cauſe on ſuch ſupplemental or new bill.

No witneſſes which were or might have been examined on the former bill, ſhall be examined on a bill of review. Nor ſhall any new evidence, or matter then in the knowledge of the party, and which might have been uſed before, be a ſufficient ground for a bill of review. 3 *Chan. Rep.* 76. 1 *Chan. Ca.* 43. S. P. 2 *Chan. Rep.* 45. S. P.

The matters aſſigned for error muſt appear in the decree itſelf. And no errors can be aſſigned on a bill of review, but errors in law; which muſt appear from the facts ſtated in the decree; and if new matter be diſcovered afterwards, it can only be aſſigned for error, with the leave of the court. 1 *Vern.* 166, 292.

If a decree be againſt a ſtatute, it may be reviewed and reverſed: So if the *Chancellor* errs in a decree in a matter of law, and it appears within the decree, this decree may be reviewed for this error. 1 *Roll. Abr.* 332.

But if the *Chancellor* errs in his decree upon a matter of fact, this decree is final, and cannot be reviewed, becauſe the parties cannot go to a new examination

examination of witneſſes now; for after publication this may not be done. 1 *Roll. Abr.* 382. And where the decree is final, and cannot be reviewed, it is alſo obſerved, that it cannot be altered by original bill, unleſs for matter ſubſequent. And yet if the *Chancellor* errs in his conſcience, upon a matter of fact proved before him, there may be review of this matter; becauſe there needs no new examination, but this may be reviewed upon the old depoſitions, which is uſual. 1 *Roll. Abr.* 382. *Vide Chan. Ca.* 45.

It has been inſiſted on as a rule, That nothing ſhall be a ground to direct a new trial to avoid a judgment at law, that would not be a ground for a bill of review to reverſe a decree; and that a confeſſion ſubſequent to the decree is no ground for a bill of review; nor is the want of any evidence or matter which might have been uſed in the firſt cauſe, and of which the party had then knowledge. 3 *Chan. Rep.* 76. 1 *Chan. Ca.* 43. S. P. 2 *Chan. Rep.* 45. An account was decreed, pending which the ſuit abated; and yet the account was carried on, finiſhed and confirmed by decree, and held to be no error, or cauſe of reverſal on a bill of review brought. 1 *Chan. Ca.* 44, 45, 122. But *quære* if this account could be carried on, as the ſuit abated, without bringing a bill of revivor, and an order obtained for reviving the former proceedings.

If a decree, or any part of it, be in the nature of things impoſſible, or if it be repugnant, and one part contradictory to the other, it is erroneous, and may be reverſed on a bill of review. 1 *Chan. Ca.* 86. But though there be apparent error in the decree, if the party has reſted under it ſixteen or twenty years, the court in ſome caſes will not reverſe it upon a bill of review. 1 *Chan. Rep.* 140. Alſo the court will not reverſe a decree

cree for want of form, or miſtaking in an account; for that may be helped by a Maſter, without reviewing: No bill of review, or other new bill, ſhall be admitted to change or alter a matter already decreed, till the party hath obeyed the decree in all things, which ſtand upon the ſtrength of the decree only; wherein the court can ſet him in as good a ſtate again as he was, in caſe the former decree ſhould happen to be reverſed: And where the decree is to yield up the poſſeſſion of lands, deliver writings, or pay money, *&c.* he muſt firſt perform theſe things before he is admitted to a bill of review; except the court ſee cauſe to diſpenſe with the manner of the performance, *viz.* if money is decreed, the court will ſometimes accept of good ſecurity. *Toth.* 42. 1 *Chan. Ca.* 42, 86. *Vide* 1 *Chan. Rep.* 139. 2 *Chan. Rep.* 48.

But if the decree requires an act to be done, which would extinguiſh the party's right at common law; ſuch as conveying lands, releaſing a debt, acknowledging ſatisfaction, cancelling evidences, *&c.* theſe parts of execution of the decree will be ſpared, and of courſe be ſtayed by order of court, until the bill of review be determined; though the plaintiff in review muſt move for an order to ſtay the execution of the decree in theſe or the like particulars, or what elſe is proper to be ſtayed, if he expect to have it ſo. 1 *Chan. Ca.* 42.

A decree (and much more an interlocutory order) gained by fraud may be ſet aſide on a petition, (as well as a judgment at law by motion) ——*a fortiori* may ſuch decree be ſet aſide by bill. 3 *Will. Rep.* 111. By Lord Chancellor *arguendo.*

On a bill of review the cauſe for review muſt ariſe and appear upon the caſe as it is ſtated in the

the decree, and the facts muſt be admitted as they are ſtated. *Vide* 1 *Chan. Ca.* 54, 55.

The plaintiff, who had a decree, brought a bill of review, and thereby complained, that he had not enough decreed him; and a demurrer being made thereto, for that if a bill of review lies, it is only for him againſt whom the decree is; after a long debate, the demurrer was allowed, and the bill of review diſmiſſed. And where a former bill of review had been diſmiſſed, the party brought another ſuggeſting farther errors, *&c.* But this was diſmiſſed alſo on the maxim, *Intereſt reipublicæ ut ſit finis litium.*

If a man brings a bill of review, to which there is a demurrer, which is allowed, he cannot afterwards bring a new bill of review. 1 *Vern.* 44. 1 *Vern.* 417. S. P.

A bill of review lies not after a bill of review. 1 *Vern.* 135. 2 *Chan. Ca.* 133.

Where a demurrer to a bill of review is allowed, it may be inrolled; but if over-ruled, it cannot, ſo as to prevent the demurrer's being reargued. 2 *Vern.* 120.

Sometimes bills in nature of bills of review are brought in this court againſt decrees and other proceedings in *Ireland*, and limited juriſdictions in *England:* And decrees of inferior courts may by bill here be examined, and affirmed or reverſed, as the court ſees cauſe.

But ſuch bills are more properly *bills* of *reverſal*, and not *bills* of *review*. And decrees made in *Ireland* may be appealed from to the Houſe of Lords here, and either confirmed or reverſed by that Houſe; ſo likewiſe may decrees made by the court of *Exchequer* here, and alſo decrees of other inferior courts.

Where error appears in the body of the decree *drawn up* and *inrolled*, the court will open the decree. *Prec. in Chan.* 260, 261. The

The *ſame* decree gives liberty to try the title at law, and yet awards injunctions to put plaintiff into poſſeſſion, and quiet him in his poſſeſſion; reverſed as repugnant. *Vide* 2 *Vol. Abr. Eq.* 281. (C) *Ca.* 2.

Note, That beſides this manner of reverſing decrees, they may alſo be reverſed by *appeals* in *Parliament.*

CHAP. VI.

Of Appeals in Parliament (*a*).

(*a*) An appeal lies not to the Houſe of Lords, from a ſentence by delegates, or from a decree on the ſtatute of charitable uſes. Vern. 118. — By a ſtanding order of the Houſe of Lords, made March 24, 1725, appeals are to be brought within five years after the decree or order in the court below is ſigned and inrolled. Forteſ. Rep. 10.

THERE are two ways for reverſing decrees of this court; the one by bills of review in the ſame court, already treated of; the other by appeals in Parliament. And though when the decree is to be reverſed by a bill of review, the matter aſſigned for error muſt appear in the decree itſelf; yet when you proceed by appeal in Parliament, any matter may be aſſigned therein, although not appearing in the decree.

If either party thinks himſelf aggrieved by a decree, he may by petition appeal to the Lords in Parliament, and have the cauſe reheard there, and they will affirm, alter, or reverſe the decree, as they ſee fit.

But obſerve, that an appeal cannot regularly be made to the Houſe of Lords, till after a rehearing before the *Chancellor*, if the cauſe was heard by the *Maſter of the Rolls:* Though if a decree be made by the *Maſter of the Rolls*, and the ſame is ſigned and inrolled, yet there can be no rehearing thereof before the *Chancellor*; but ſuch decree muſt be appealed from to the Houſe of Lords.

On an appeal from a decree; new matters may be read, not formerly in proof. *Gilb.* 151. *Sed vide Prec. in Chan.* 295.

An appeal againſt inrolling a decree, is only to give the court an opportunity of hearing what could be ſaid againſt it. *Gilb.* 151.

Ergo on ſuch an appeal the cauſe is intirely open, and the party at liberty to offer what he can. *Gilb.* 152.

Appeals are to be ſigned by two noted counſel, and exhibited by way of petition, and lodged with the clerk of the Houſe of Lords, with whom the appellant is to depoſit twenty pounds to recompence the other party his coſts, in caſe he fails in his appeal, *&c.*

The appeal being thus lodged, and read in the Houſe, the reſpondent is ordered to have a copy of the appeal, and required to put in his anſwer thereto on a day fixed; and a day is appointed for hearing the cauſe, in order as the appeals come in, and notice is given thereof to the appellant's ſolicitor, who may get a ſummons ſerved on the other ſide to appear, *&c.*

Theſe appeals can only be argued by two counſel on each ſide: And after hearing counſel on the appeal, and upon the anſwer on due conſideration thereof, the Lords order and adjudge that the decree of the *Chancery* be varied in ſuch matters as their Lordſhips think fit, or that the petition and appeal be diſmiſſed, and the decree affirmed with coſts, *&c.* A majority of the Lords finally determines the cauſe.

Sometimes the Houſe of Lords direct an iſſue at law for trial of ſome point neceſſary between the parties; and after ſuch trial to reſort back to the court of *Chancery*, for their farther directions in that matter.

And printed copies of the appellant's and alſo the reſpondent's caſe are uſually delivered to the Lords for their better information of the matter in controverſy; which caſes, before printed, are always ſigned by two counſel, *viz.* the plaintiff's caſe by two of his counſel, and the defendant's caſe by two of his counſel; whoſe reſpective names are printed at the bottom of the caſes.

A petition and appeal to the Houſe of Lords.

Between *A. B.* plaintiff,
C. D. defendant.

To the Right Honourable the Lords ſpiritual and temporal in Parliament aſſembled.

The humble petition and appeal of the plaintiff A. B.

Sheweth,

THAT *M. &c.* [Set forth your caſe.]

That your petitioner ſometime in or about ——— term, exhibited his bill in the high court of *Chancery* againſt the ſaid *C. D.* to be relieved, *&c.* [*Set forth the prayer of the bill.*] To which bill the ſaid *C. D.* appeared and anſwered, and thereby inſiſted that, *&c.* [*Set forth ſuch parts of the anſwer which he inſiſted upon againſt the plaintiff's bill.*]

That your petitioner having replied to the ſaid anſwer, and the ſaid defendant having rejoined, the ſaid cauſe was at iſſue, and divers witneſſes being examined on both ſides, the ſame came on to be heard before the late Lord Chancellor of *Great Britain* the ——— day of ——— 1744. when although the ſaid *C. D.* had by his anſwer expreſly ſworn, *&c.* [*the reaſons admitted by his*

anſwer, and for which you appeal,] yet his Lordſhip was pleaſed to decree that, &c. [*Set forth the decree, and if there were any ſubſequent proceedings before the Maſter, or the like, ſet them forth briefly.*]

That your petitioner is adviſed the ſaid decree (and ſubſequent orders) are erroneous, and humbly appeals therefrom to your Lordſhips.

Your petitioner therefore humbly prays your Lordſhips to grant to your petitioner your Lordſhips order of ſummons to the ſaid *C. D.* to put in his anſwer to this your petitioner's appeal at ſuch time as your Lordſhips ſhall prefix, in order that your Lordſhips may hear the ſaid cauſe, and that your Lordſhips will be pleaſed to reverſe the ſaid decree (and ſubſequent orders) in the ſaid cauſe, or grant to your petitioner ſuch relief in the premiſſes as to your Lordſhips in your great wiſdom ſhall ſeem meet.

And your petitioner ſhall ever pray, &c.

A. B. (the appellant.)

G. H.
J. K. } counſel.

The reſpondent's anſwer.

The anſwer of C. D. *to the petition and appeal of* A. B.

THIS reſpondent not confeſſing or acknowledging all or any of the matters or things to be true, as in and by the ſaid petition and

appeal are mentioned and ſet forth, for anſwer thereunto, ſaith, That he believes it to be true that ſuch decree (and ſubſequent orders) as are complained of, were made by the court of *Chancery* as in the ſaid petition and appeal are mentioned and ſet forth: But as to the dates, ſubſtance and contents thereof, this reſpondent humbly craves leave to refer thereunto when the ſame ſhall be produced; and this reſpondent humbly conceives and is adviſed that the ſaid decree (and ſubſequent orders) are agreeable to equity and juſtice, and therefore humbly hopes that the ſame ſhall be affirmed, and that the ſaid petition and appeal ſhall be diſmiſſed this moſt honourable Houſe with coſts.

L. M. (counſel.)

CHAP. VII.

Of coſts in general (*a*).

(*a*) An infant pays no coſts on a bill filed by the prochien amy. 1 Strange 708.

WHEREVER the court decrees the party to pay coſts perſonally, in that caſe the Maſter taxes them, and you proceed by *ſubpœna* and attachment for recovery thereof: But where the court directs that they ſhall be paid out of a real or truſt eſtate, and not by the perſon of the party, if the eſtate is ſold, the coſts are uſually paid out of the purchaſe money, or out of the profits in the receiver's hands; or if the party who is to pay them, has ſufficient profits in his hands, the court will direct him to pay them thereout, or ſend him to an inquiry before a Maſter, whether there is ſufficient for the purpoſe, or not.

It

It is ſaid in the court of exchequer, if a man brings a bill for 5000 *l.* and recovers only 5*l.* the defendant ſhall pay him his coſts throughout; but not ſo in *Chancery*, for the party ſhall have coſts only ſo far as he prevails in his ſuit; and it ſhall be referred to a maſter to diſtinguiſh the ſame: And this rule is founded upon good reaſon; for if a plaintiff ſets up four demands, and prevails only in one, it is unreaſonable he ſhould have coſts throughout; therefore he muſt pay coſts where he does not prevail, or at leaſt loſe all the reſt of his coſts, if he does not pay them to the other party; and in this caſe the maſter muſt look over all the proceedings which relate to the matter prevailed in, and no farther.

There was an order made in Lord Keeper *Wright*'s time, that no exception ſhould be allowed to a report of taxing coſts, and has been ſince purſued with this difference, that where the Maſter allows ſuch coſts as ought not to be allowed by law, in ſuch caſes, though it very ſeldom or never falls out, the court will indulge the party to except touching this point.

The court never refuſes upon a clerk or ſolicitor's petition to have his bill taxed; and it was ſettled on debate, that the court cannot order the client to pay what is taxed, becauſe it may be recovered by law.

But it is otherwiſe on client's petition to ſubmit to payment of what is due; in that caſe the clerk or ſolicitor, where the bill is taxed, may take out a *ſubpæna* for the coſts, and proceed by attachment, as in other caſes; and this becomes a perſonal demand upon his client.

As to ſcandals, there are many caſes where though the words in the record are very ſcandalous and highly reflecting on the party, yet the court does not think them ſo; eſpecially where

they are material, and tend to a diſcovery of the very matter in queſtion; for a man may be guilty of a very notorious ſcandal, or of a ſcandalous action, as in caſe of a brokage bond given before marriage to draw in a woman to marry, where a man is repreſented to have a great eſtate, and ſuch like: And the court judges whether the matter may *primâ facie* be ſcandalous; yet if it is of abſolute neceſſity ſo to be, the court never looks upon it to be ſcandalous.

But where the ſcandal is altogether malicious and foreign to the point in queſtion, in all theſe caſes, if the Maſter reports it ſcandalous, there the court will order the Maſter to expunge it, with coſts paid and received. The Maſter generally gives full coſts, and at the end of the bill 20*l.* *&c.* which the party may be ſuppoſed to have ſuffered in his reputation by the ſcandal; and it is diſcretionary in the Maſter to allow what he pleaſes.

As to what concerns ſcandals or impertinencies in any bills, anſwers or records of the court, they are always referred to a maſter, and the coſts paid on which ſoever ſide the report falls.

Impertinencies are, where the records of the court are ſtuffed with long recitals, digreſſions of matter of fact, unneceſſary and immaterial to the point in queſtion; as where a bill of review is brought, and the party ſets forth *in hæc verba* not only the other bill and anſwer, but the whole proceeding in the caſe; which being all matters of record, and fair copies of which the party has once paid for, he ought not to pay for them over again: There is no occaſion to ſet them forth *in hæc verba*, or make an unneceſſary repetition, for they ought to be conciſe and ſhort; for where a bill of revivor is grounded on another bill and proceedings, they go no farther than ſaying, that ſuch a one in

or

or about ſuch a term exhibited his other bill into this honourable court, to be relieved touching certain matters and things therein contained, as by the ſame bill duly filed and remaining, *&c.* that witneſſes being examined, publication paſſed, and the cauſe being at iſſue came on to be heard ſuch a day, when it was ordered ſo and ſo; and there take in the ordering part of the decree very ſhortly, and no more than what is material to the revivor, and the regiſter's recitals are wholly omitted; for when a decree is inrolled, it is never done from the regiſter's recitals, which are very often miſtaken.

If any diſpute ariſes, the bill and anſwer muſt be read:

This *ſhort* method of drawing a bill of revivor muſt be obſerved by the draughts-man, *viz.* that the former proceedings be recited in the ſhorteſt manner poſſible, ſince they can be of no uſe to his client; for from the records alone the fact muſt be determined; if otherwiſe ſet forth they are impertinent, and will be expunged with coſts. All the defendant has to do, is by anſwer to ſet forth, he believes there was ſuch a ſuit, decree and proceedings, and refers to records; and as it is hard for the ſuitor to pay coſts for this impertinence, who is ignorant of the matter, and it is the fault of the counſel, ſo it ſometimes falls out, that the court will paſs a cenſure on ſuch counſel who ſigned the pleadings; and precedents may be found, where the court has ordered counſel to pay coſts out of his own pocket; which would prevent counſel from ſtuffing the bills with tautology or impertinency: And the ſame rule ought to be held in exceptions to a report; for ſome counſel will ſign the exceptions, and perhaps moſt of them are frivolous and vexatious, and they ought for the eaſe of the court to be diſcouraged wherever

met with; and the court is of neceſſity to take notice of the counſel who ſigned the ſame.

Bill brought againſt a corporation to diſcover writings. — The defendants anſwer under their common ſeal, and ſo, not being ſworn, will anſwer nothing in their own prejudice. —— Ordered that the clerk of the corporation, and ſuch principal members as plaintiff thinks fit, anſwer on oath; and that the Maſter ſettle the oath. 1 *Vern.* 117.

If the party intitled to have coſts dies before they are taxed, they are gone. *Sel. Ca. in Chan.* 21.

Several perſons incloſed lands under a cuſtom, another brings eight actions againſt them.——A bill is brought to ſtay proceedings at law, and to eſtabliſh the cuſtom. On iſſue directed a verdict is found in favour of the Cuſtom. —— Defendant ſhall pay coſts at law and equity. *Barnard.* 436.

Executor bringing a frivolous bill, ordered to pay coſts out of the aſſets, ——if aſſets denied, to be examined on interrogatories. *Sel. Ca. in Chan.* 62.

Feme ſole brings a bill, then marries.——Baron and Feme bring a bill of revivor, and have a decree with coſts, they ſhall have coſts for the whole ſuit, except the bill of revivor. 1 *Vern.* 318.

Coſts ſhall follow the event of an account. *Vid.* 2 *Vol. Abr. Eq.* 237.

[For more of coſts in general, *vid.* 2 *Vol. Abr. Eq. p.* 237.

Agreement made rule of court.

AGREEMENTS are frequently ſigned by the parties, their clerk in court and ſolicitor, and afterwards deſired to be made an order of court: The court generally aſks what they are for, and

and whether no infant or feme covert in the caſe; for if there be, the court cannot make the agreement of the parties an order of court, becauſe no infant or feme covert can be bound thereby.

And it were to be wiſhed this queſtion were to be aſked of the counſel, when motions are conſented to in open court, and many a plaintiff is caught even at the hearing of the cauſe, where an infant is defendant, and admits the equity of his bill by the anſwer: For notwithſtanding ſuch admiſſion, yet the plaintiff muſt prove every thing againſt the infant, as if his whole equity had been denied. Becauſe an infant is incapable of admitting any thing whatſoever to his prejudice; and the court is bound *ex debito juſtitiæ* to take care of all infants who come before them, becauſe they are not able to help themſelves, or look after their own, as men of full age are.

CHAP. VIII.

Bills and anſwers.

A bill to prove a will againſt the heir at law.

To the Right Honourable Lord High Chancellor of Great Britain.

HUMBLY complaining ſheweth unto your Lordſhip, your orator *G. S.* of *W.* in the pariſh of *B.* in the county of *D.* an infant under the age of twenty-one years, by *M. S.* widow, his mother and next friend, That *J. S.* of *W.* aforeſaid, your orator's late father deceaſed,

being in his life-time and at the time of his death ſeiſed, poſſeſſed of, and intereſted in a very conſiderable eſtate both real and perſonal; and being minded to ſettle and diſpoſe of the ſame, did on or about the fifth day of *March* which was in the year of our Lord 1727, (being of ſound and diſpoſing mind, memory and underſtanding,) duly make and publiſh his laſt will in writing in the words and figures following, that is to ſay, In the name of god, Amen, *&c.* [*Here ſet forth the will* verbatim.] In witneſs, *&c. J. S.* Signed, ſealed, publiſhed and declared, *&c. G. H. J. K. L. M.* Which ſaid will was duly ſigned, ſealed, publiſhed and declared by your orator's ſaid father in the preſence of the perſons whoſe names are ſubſcribed to the ſaid will as witneſſes to the ſame, as in and by the ſaid will, relation being thereunto had, it doth and may more fully appear. And your orator further ſheweth unto your Lordſhip, that ſhortly after making the ſaid will, *to wit*, on the ——day of——the ſaid *J. S.* departed this life, without revoking or making any alteration of the ſame, ſo ſeiſed and poſſeſſed as aforeſaid, leaving *J. S.* of *F.* in the ſaid county of *D.* his only ſon and heir at law; but the ſaid *J. S.* having duly made and publiſhed his laſt will and teſtament in manner aforeſaid, your orator well hoped he ſhould have quietly and peaceably held and enjoyed the ſame meſſuage, farm and lands according to the directions of the ſaid will, as in all juſtice and equity he ought to have done. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *J. S.* your orator's brother and heir at law of the ſaid *J. S.* deceaſed, in order to defeat and defraud your orator of the benefit of his ſaid father's will, and the premiſſes thereby to him deviſed, doth ſometimes pretend, that your orator's ſaid father the ſaid *J. S.* never made and publiſhed ſuch laſt

will

will and testament as aforesaid; or that if he did, he was only tenant for life of the said premisses so devised to your orator, and therefore had no power to dispose of the same, or that he was not of sound and disposing mind, memory and understanding at the time of his making his said will as aforesaid, and therefore pretends your orator ought not to hold the same under the said will. And at other times your orator's said brother pretends, that in case his father was of sound and disposing mind when he made, published and declared his said will, yet the witnesses did not subscribe their names as witnesses thereunto in his presence, and so the said will is void, and that he the said *J. S.* as heir at law to his said father, hath a good right and title to the said premisses; or that if they did, then he threatens that when the witnesses to the said will are dead, he will contest the same and the validity thereof, and set up his title as heir at law to the said devised premisses, by means whereof your orator cannot dispose of the said premisses devised to him as aforesaid, nor be quieted in the present possession thereof; All which pretences of the said *J. S.* and his confederates are contrary to equity and good conscience, and tend to injure and oppress your orator. **In tender consideration** whereof, and forasmuch as your orator cannot examine his witnesses, who are aged and infirm, and not likely to live long, or have their testimony preserved in proof of the said will, without the aid and assistance of this honourable court; **To the end** therefore that the said *J. S.* your orator's said brother, may true answer make to all and singular the premisses as fully and particularly as if the same was here again repeated and interrogated, and may set forth whether your orator's father was not in his life-time, and at the time of his death, seised of the premisses

before-

beforementioned, and what eſtate he had therein, and whether he did not, and when make ſuch will as aforeſaid, and may ſet forth whether he was not of ſound and diſpoſing mind, memory and underſtanding at the time of his making and publiſhing thereof, and whether he had not power to diſpoſe and make ſuch deviſe of the ſaid premiſſes in manner aforeſaid; and may alſo ſet forth what title or intereſt he your orator's ſaid brother claims to or in the ſame, and that your orator may have his witneſſes to the ſaid will examined, and their teſtimony recorded in this honourable court, in order to the perpetuating thereof, ſo that your orator may have the benefit thereof at any time when there ſhall be occaſion; May it pleaſe your Lordſhip to grant unto your orator his Majeſty's moſt gracious writ of *ſubpœna* to be directed to the ſaid *J. S.* thereby commanding him at a certain day, and under a certain pain therein to be inſerted, perſonally to be and appear before your Lordſhip in this honourable court, then and there to anſwer the premiſſes, and to ſtand to, and abide ſuch order and decree therein, as to your Lordſhip ſhall ſeem agreeable to equity and good conſcience.

And your orator ſhall ever pray, &c.

The

The anſwer to the foregoing bill.

The anſwer of J. S. *an infant under the age of twenty-one years, by* W. M. *his guardian, defendant, to the bill of complaint of* G. S. *an infant, by his next friend* M. S. *widow, complainant.*

THE ſaid defendant, ſaving and reſerving to himſelf now, and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold incertainties and imperfections in the complainant's ſaid bill of complaint contained, for anſwer thereunto, or unto ſo much thereof as materially concerns this defendant to make anſwer unto, he anſwereth and ſaith, That he believeth it to be true, that *J. S.* in the bill named, father of him this defendant and the complainant, was in his life-time, and at the time of his deceaſe, ſeiſed of the premiſſes in the bill mentioned to be deviſed to the complainant; and doth alſo believe, that the ſaid *J. S.* being ſo thereof ſeiſed, did about the time for that purpoſe in the bill mentioned make and duly publiſh his laſt will and teſtament in writing, whereby he deviſed the ſaid premiſſes to the complainant as in and by the ſaid bill of complaint is ſet forth and alledged, and that he had power to diſpoſe of the ſame, and was of ſound mind, memory and underſtanding at the time of his making thereof; but this defendant doth not know the ſame of his own knowledge, and therefore hopeth that the complainant ſhall be compelled to make due proof thereof before he ſhall be let into any benefit by the ſaid will; and the rather, for that in caſe this defendant's ſaid father had not made ſuch will, and thereby ſuch diſpoſition

ſition of the premiſſes as in the bill is ſet forth, he this defendant, as he is adviſed, had been well intitled to the ſame as heir at law to his ſaid father: And this defendant ſaith, that he being but an infant, and not capable of judging of the matters in the complainant's ſaid bill contained, humbly hopes this court will take care of him and his intereſt in the ſaid premiſſes, in caſe it ſhall appear he hath any therein: And this defendant further anſwering, denies that he ever gave out in ſpeeches, that his ſaid father had no right or power of diſpoſing of the ſaid premiſſes, or that he made no ſuch will as in bill, or that in caſe he made any ſuch will, yet that he was not of ſound and diſpoſing mind, memory and underſtanding when he made the ſame, as in the bill is untruly ſuggeſted: And this defendant denies all and all manner of combination and confederacy wherewith he ſtands charged in and by the ſaid bill of complaint; Without that, that there is any other matter or thing material or neceſſary for this defendant to make anſwer unto, and not herein, and hereby well and ſufficiently anſwered unto, confeſſed or avoided, traverſed or denied, is true: All which matters and things this defendant is ready to aver and prove, as this honourable court ſhall direct and award, and humbly prays to be hence diſmiſſed, with his reaſonable coſts and charges in this behalf moſt wrongfully ſuſtained.

[*Vide poſt* interrogatories for proof of the will. *page 417.*]

A bill of the like kind as the former (Vide chap.) *p.*) *with an anſwer, inſiſting that the teſtatrix was a papiſt.*

HUMBLY complaining, ſhew unto your Lordſhip, your orators and oratrix *T. C.* late of ——— in the county of ———, and *E. P.* commonly called *P.* of ——— in the county of ———, gent. *D. T.* of ——— in the county of ———, ſpinſter, *R. C.* of ——— in the ſaid county of ———, gent. and *H. B.* of ——— in the county of ———, gent. That *J. D.* late of the pariſh of ——— in the ſaid county of ———, widow, late the relict of *G. W.* late of ——— in the county of ———, gent. deceaſed, and one of the daughters of *C. T.* late of ———, Eſq; deceaſed, who was ſon and heir of *E. T.* the younger, late of ———, knight, alſo deceaſed, being in her life-time, and at the time of her death, ſeiſed of the reverſion and inheritance in fee, (or of ſome other good eſtate of inheritance expectant upon the death of *E. T.* Eſq; whereby ſhe had power to diſpoſe of the ſame;) of and in divers manors, meſſuages, lands, tenements and hereditaments in the counties of ——— and ———, and elſewhere; and being minded and deſirous to diſpoſe of the ſame in ſuch manner and ſort, that no diſputes might ariſe after her death, touching any claim that might be made thereunto, or to any part thereof after her death; and being of ſound and diſpoſing mind, memory and underſtanding, did, on or about the —— day of —— in the year ———, duly make and publiſh her laſt will and teſtament in writing, and ſigned the ſame in the preſence of three credible witneſſes, who in her preſence ſubſcribed and atteſted the ſame in ſuch manner and form

form as the law requires in caſes of deviſes of lands and tenements and real eſtates, which laſt will and teſtament is in the words following. In the name of God, Amen. I *J. D.* of ——, widow, do make and ordain this my laſt will and teſtament in manner and form following: *Item*, I give and deviſe unto my loving friend *E. P.* of —— in the county of ——, gent. and *T. C.* of —— in the county of ——, all my eſtate, *&c.* [*Here ſet forth the words of the will.*] In witneſs whereof I have hereunto ſet my hand and ſeal this —— day of ——, in the year of our Lord ——. *J. D.* Signed, ſealed, publiſhed and declared by the ſaid teſtatrix as her laſt will and teſtament in the preſence of us, and atteſted by us in her preſence, *T. H. J. B. T. R.* And your orators and oratrix further ſhew unto your Lordſhip, that the ſaid *J. D.* ſoon after making and publiſhing of her ſaid will, *(to wit)* on or about the third day of *July* laſt, departed this life without revoking or altering her ſaid will, leaving *S.* the wife of *J. G.* of *W*— in the county of ——, gent. (a defendant herein after named,) her heir at law; And your orators *T. C.* and *E. P.* proved the ſaid will, and took upon themſelves the burthen and execution thereof; and your orators and oratrix well hoped that no diſputes would have ariſen touching the ſaid diſpoſition made by the ſaid *J. D.* of her real eſtate as aforeſaid, or of her power in ſo doing, or touching or concerning any claim or demand upon her ſaid eſtate, or any part thereof. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *J. G.* and *S.* his wife, combining and confederating to and with divers perſons at preſent unknown to your orators and oratrix, whoſe names, when diſcovered, your orators and oratrix pray may be herein inſerted, with apt words to charge them, and each

each and every of them, how to injure and prevent your orators and oratrix in the deviſes made them reſpectively in and by the ſaid will of the ſaid *J. D.* ſometimes pretend that the ſaid *J.* did not make and publiſh ſuch will of ſuch date, and to ſuch purport and effect as is herein before ſet forth, or if ſhe did, yet that the ſame was not ſo made, executed and atteſted, as the law requires in caſe of a will for paſſing of real eſtates, or if ſo, that the ſaid *J. D.* was not of ſound and diſpoſing mind, memory and underſtanding at the time of making ſuch will, or if ſhe was of ſound and diſpoſing mind, memory and underſtanding at the time of making thereof, that ſhe had not power to deviſe the ſame in the manner ſhe has done in and by her ſaid will; whereas your orators and oratrix expreſsly charge, and ſo the ſaid confederates well know in their conſcience the truth to be, that the ſaid *J. D.* was, at the time of making her ſaid laſt will and teſtament, of ſound and diſpoſing mind, memory and underſtanding, and had good and abſolute power to make ſuch diſpoſition and deviſes as ſhe hath done therein and thereby, and that ſhe did accordingly make and publiſh her ſaid will in ſuch manner and form as the law requires in caſes of deviſes of real eſtates; and therefore the ſaid confederates, to defeat your orators and oratrix of the deviſes and eſtates therein given and made to them, decline conteſting the ſaid will, or the validity thereof, during the lives of the witneſſes thereto, but give out, that when the witneſſes to the ſaid will are dead, they will call in queſtion the validity thereof; To avoid which, and that the teſtimony of the witneſſes to the ſaid will may be perpetuated, **And to the end** that the ſaid confederates may, upon their ſeveral and reſpective corporal oaths, full, true and perfect an-

ſwer make, to all and ſingular the premiſſes, as fully and particularly as if the ſame were here again repeated, and they thereto interrogated; and more eſpecially that they may ſet forth and diſcover whether they do not know, have heard or been informed, and in their conſciences believe, that the ſaid *J. D.* did make and publiſh her laſt will and teſtament, of ſuch date, purport and effect as herein before for that purpoſe is ſet forth, or of any other, and what date, purport and effect; and whether ſhe the ſaid *J. D.* was not of ſound and diſpoſing mind, memory and underſtanding at the time of making and publiſhing of the ſaid laſt will and teſtament herein before ſet forth, and whether the ſame was not duly publiſhed in the preſence of ſuch three witneſſes, and by them atteſted in the preſence of the ſaid teſtatrix, as mentioned in the ſaid will and herein before ſet forth, and as the law directs in caſe of deviſes of real eſtates; and whether the ſaid teſtatrix had not power to make ſuch deviſes of her real eſtate as in and by the laſt will and teſtament ſhe has done, and why, and for what reaſon ſhe had not power ſo to do; and whether the ſaid teſtatrix *J. D.* did not depart this life at or about the time herein before for that purpoſe mentioned, or at any other, and what time; and may ſet forth whether they do or do not conteſt the ſaid will, or the validity thereof; and that your orators and oratrix may be at liberty to examine their witneſſes to the ſaid will, in order to perpetuate their teſtimony thereto; May it pleaſe your Lordſhip, *&c.*

The

The anſwer of J. G. *and* S. *his wife, defendants, to the amended bill of complaint of* T. C. *and* E. P. *otherwiſe* P. *gent. and* D. T. *widow, and others, complainants.*

THE ſaid defendants now, and at all times hereafter, ſaving, *&c.* they anſwer and ſay: They admit that the defendant *S.* is heir at law of *J. D.* in the complainant's ſaid bill named; and theſe defendants have heard, that by virtue of, or under ſome limitation or deviſe in the will of Sir *E. T.* late of ——— in the county of ———, grandfather of this defendant *S. G.* bearing date on or about the —— day of ———, ſeveral manors, meſſuages, lands, tenements and hereditaments in the counties of ——— and ———, or the reverſion or inheritance thereof, were limited by the ſaid Sir *E. T.* to his nephew *E. T.* for life, remainder to truſtees to preſerve ſeveral contingent remainders and eſtates therein mentioned; and theſe defendants have heard, and believe it to be true, that a remainder in the ſaid premiſſes was by the ſaid will limited, after ſeveral intermediate eſtates, to the daughter and daughters of *M. T.* one of the daughters of the ſaid Sir *E. T.* and to the daughter and daughters of *C. T.* the father of the ſaid *J.* and to the heirs of all and every ſuch daughter and daughters of the ſaid *M. T.* and *C. T.* To hold as tenants in common, and not as joint-tenants; but as touching the will of the ſaid Sir *E. T.* and the limitations in the ſaid will, theſe defendants, for more certainty, refer thereunto, when the ſame ſhall be produced to this honourable court: But theſe defendants ſay, that in caſe the ſaid Sir *E. T.* duly made ſuch will as aforeſaid, that the ſaid *J. D.* at the time of making thereof was a papiſt, and

profeſſed the popiſh religion, as theſe defendants do believe and inſiſt, and believe and inſiſt that ſhe continued to be a papiſt, and to profeſs the popiſh religion from that time until the time of her death, and by means thereof was, as theſe defendants are adviſed and inſiſt, by the ſtatute made in the 11th and 12th years of the reign of king *William* III. intitled, *An act for the further preventing the growth of popery*, diſabled and made incapable to purchaſe, either in her own name, or in the name of any other perſon or perſons to her own uſe, or in truſt for her, any manors, lands, profits out of the lands, tenements, rents, farms or hereditaments within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed:* And theſe defendants ſay, that the ſaid *E. T.* the nephew was a proteſtant, and ſurvived the ſaid *J. D.* and that this defendant *S.* is heir at law to the ſaid Sir *E. T.* And theſe defendants do believe, and admit it to be true, that the ſaid *J.* was the only ſurviving daughter of the ſaid *C. T.* and that the ſaid *M. T.* died without iſſue and unmarried; but whether the ſaid *J.* made ſuch will as in the complainant's bill is mentioned and ſet forth, or whether ſhe was of ſound memory and underſtanding at the time of making ſuch will, or whether the ſame was ſo made, publiſhed and atteſted, as in the complainant's bill is ſet forth, or as the law requires in caſe of deviſes of land, or in any and what other manner or form, theſe defendants know not, nor can ſet forth, nor have been informed thereof, ſave by the ſaid bill. And theſe defendants ſay, the complainant *E. P.* and alſo *D. T.* in the bill named, are perſons that were educated in the popiſh religion, and profeſſing the ſame ſince the tenth day of *April* in the year of our Lord 1700. and that at the time of making

king the will of the ſaid *J. D.* in the bill for that purpoſe mentioned, if any ſuch ſhe made, and alſo at the time of her death, they the ſaid *E. P.* and *D. T.* and each of them, were papiſts and profeſſed the popiſh religion, and that they and each of them have continued papiſts, and to profeſs the popiſh religion ever ſince the death of the ſaid *J. D.* and that they now are papiſts, and do profeſs the popiſh religion, and are, as theſe defendants are adviſed and inſiſt, by the aforeſaid ſtatute made in the 11th and 12th years of the reign of king *William* III. intitled, *An act for the further preventing the growth of popery*, diſabled and made incapable to purchaſe, either in their own names, or in the name of any other perſon or perſons, to their uſe, or in truſt for them, any manors, lands, profits out of lands, tenements, rents, farms or hereditaments within the kingdom of *England*, dominion of *Wales* and town of *Berwick upon Tweed*; and theſe defendants ſay, that they are adviſed, and humbly inſiſt, that in and by the ſame ſtatute, all and ſingular eſtates, terms, or any other intereſt or profits whatſoever out of the lands from and after the ſaid tenth day of *April* aforeſaid in the ſaid year of our Lord 1700. aforeſaid to be made, ſuffered or done, to or for the uſe or benefit of any papiſt or perſon making profeſſion of the popiſh religion, or upon any truſt or confidence mediately or immediately, to or for the benefit or relief of any ſuch perſon or perſons, is utterly void, and of none effect, to all intents, conſtructions or purpoſes whatſoever; And theſe defendants, each ſpeaking for themſelves, ſay they are proteſtants, and claim the benefit of the aforeſaid act of Parliament or ſtatute, and are adviſed, and humbly inſiſt, that the ſaid will of the ſaid *J. D.* in the complainant's bill of complaint for

that purpoſe mentioned, if any ſuch ſhe made, ſo far as the ſame tends mediately or immediately to or for the benefit of the ſaid *E. P.* or *D. T.* or either of them, is utterly void and of none effect, to all intents, conſtructions or purpoſes whatſoever; and that theſe defendants, in right of this defendant *S.* as the ſaid *S.* is heir at law to the ſaid *J. D.* are intitled to all the real eſtate of the ſaid *J. D.* in poſſeſſion or reverſion which was not ſufficiently deviſed by her ſaid will, if any ſuch ſhe made. And theſe defendants further ſay, that the ſaid *J. D.* at the time of making her laſt will and teſtament, if any ſuch ſhe made, and at the time of her death, was a papiſt, and profeſſed the popiſh religion, and theſe defendants are adviſed, and humbly inſiſt, that according to the laws and ſtatutes of this realm now in force, the truſts created by the will of the ſaid *J. D.* ought not to be performed and executed as therein is mentioned; and theſe defendants ſay, they believe the ſaid *J. D.* died about the——day of——, and deny all and all manner of unjuſt and unlawful combination to the intent in the bill charged; without that, that, *&c.*

A bill againſt an executor for an account, &c.

HUMBLY complaining, ſhew unto your Lordſhip, your orator and oratrix, *J. K.* of ——in the county of——, Eſq; and *M.* his wife, which ſaid *M.* is the daughter and ſurviving deviſee under the laſt will and teſtament of *B. A.* late of——in the county of——, deceaſed, and alſo the only ſiſter and heir at law of *B. A.* the younger, late of —— aforeſaid, deceaſed, ſon of the ſaid *B. A.* That the ſaid *B. A.* the father, being ſeiſed and poſſeſſed of a conſiderable real and

and perſonal eſtate, duly made and publiſhed his laſt will and teſtament in writing, bearing date on or about the—— day of——1725. and thereby gave to his wife (your oratrix's mother) the ſum of two hundred pounds, to be paid her within one year next after his deceaſe; and deviſed to his ſon *B. A.* your oratrix's brother, all that his farm and lands called ——, ſituate in the pariſh of—— in the ſaid county of—— To hold to the ſaid *B.* the ſon, his heirs and aſſigns for ever; and did thereby give and deviſe unto the ſaid *B.* the ſon, and to your oratrix his daughter, all other his real and perſonal eſtate, of what kind or quality ſoever, (except his houſhold goods and plate,) which he gave to his ſaid wife *C.* (your oratrix's mother) during her natural life; and after her death he gave the ſaid houſhold goods and plate to your oratrix, her executors and adminiſtrators, To hold the ſaid perſonal and real eſtate (except as before excepted) unto his ſaid ſon the ſaid *B.* and your oratrix, their heirs, executors and adminiſtrators for ever, ſubject to the payment of a legacy of ten pounds, to *J. A.* (one of the brothers of the ſaid *B. A.* the teſtator,) and alſo to the payment of a legacy of twenty pounds to *R. A.* another brother of the ſaid *B. A.* the teſtator, and a guinea to his nephew *J. W.* to be paid them ſeverally within one year next after his death; and the ſaid *B. A.* did in and by his ſaid will deſire, that his ſaid wife might have the care and bringing up of his ſaid children the ſaid *B. A.* and your oratrix during their minority, ſo long as ſhe ſhould continue a widow; but in caſe ſhe ſhould intermarry with any other perſon after his death, then he willed that his executors might have the care and bringing up of his ſaid children, and might receive the rents and intereſt money of his real and perſonal eſtate for that purpoſe; and

of his ſaid will he the ſaid teſtator did nominate and appoint his ſaid brother *J. A.* and *J. T.* executors. And your orator and oratrix further ſhew unto your Lordſhip, that the ſaid *B. A.* your oratrix's father, departed this life on or about the —— day of —— 1729. without altering or revoking the ſaid will; and upon his death the ſaid *J. A.* proved the ſaid will in the prerogative court of the Archbiſhop of *Canterbury*; and the ſaid *J. T.* refuſing to act under the ſaid will, the ſaid *J. A.* took upon himſelf the burthen and execution thereof, and by virtue thereof poſſeſſed himſelf of all the perſonal eſtate of the ſaid *B. A.* to the amount of ——— and upwards, in truſt for the ſaid *B. A.* the ſon and your oratrix, during their minority; and the ſaid *J. A.* alſo took poſſeſſion, and received the rents and profits of the real eſtate of the ſaid teſtator deviſed by his ſaid will, in truſt alſo for the ſaid *B. A.* the ſon, and your oratrix: And your orator and oratrix further ſhew unto your Lordſhip, that your oratrix's mother the ſaid *C.* continued the care and bringing up of your oratrix and the ſaid *B. A.* her brother, from the death of your oratrix's father the ſaid *B. A.* the teſtator, till about the month of ——— 1730. at which time ſhe intermarried with one *H. C.* and immediately after her marriage with the ſaid *H. C.* the ſaid *J. A.* alone took care of the education and maintenance, and had the bringing up of your oratrix and her ſaid brother *B. A.* And your orator and oratrix further ſhew unto your Lordſhip, that the ſaid *B. A.* your oratrix's brother departed this life during his infancy, *to wit*, in or about the month of ——— 1731, inteſtate; and upon his death, your oratrix, as his only ſiſter and heir at law, became intitled to the ſaid real eſtate called ——, deviſed to him by the will of the ſaid *B. A.* the teſtator, and alſo to the moiety

or

or half part of all other the real and perſonal eſtate of the ſaid *B. A.* the teſtator, deviſed to the ſaid *B. A.* your oratrix's brother in and by the ſaid will: And your orator and oratrix further ſhew unto your Lordſhip, that the ſaid *J. T.* refuſing to act in the ſaid executorſhip, the ſaid *J. A.* alone acted under the truſt mentioned in the ſaid will, and poſſeſſed himſelf of all the ſaid teſtator's perſonal eſtate, to the amount of —— and upwards, and hath received the rents, iſſues and profits of the real eſtate deviſed to the ſaid *B. A.* your oratrix's brother (ſince deceaſed) and your oratrix as aforeſaid, ever ſince the death of the ſaid *B. A.* the teſtator, and now continues to receive the ſame: And your orator and oratrix further ſhew unto your Lordſhip, that in or about the month of —— laſt paſt, your orator and oratrix intermarried; whereby your orator, in right of your oratrix his wife, is become intitled to the real and perſonal eſtates of the ſaid *B. A.* the teſtator, ſubject to the legacies in the ſaid will mentioned; and your orator and oratrix have ſince their intermarriage often applied to the ſaid *J. A.* in a friendly manner, and deſired him to give your orator an account of the perſonal eſtate of the ſaid teſtator, and of what the ſame conſiſted, and alſo an account of the rents, iſſues and profits of his real eſtate, and to know how and in what manner the ſame have been paid and applied, and how much thereof remains in his hands; and that he might pay to your orator and oratrix what, upon the ballance of ſuch account, ſhould appear to be due to them, in right of your oratrix, and aſſign over unto your orator ſuch part of the teſtator's perſonal eſtate, as conſiſts in mortgages, bonds, or other ſecurities; and to be let into poſſeſſion of the real eſtate of the ſaid *B. A.* the teſtator in right of your oratrix his wife, as ſurviving deviſee

deviſee under the will of the ſaid teſtator, and as heir at law of her brother the ſaid *B. A.* and your orator and oratrix well hoped the ſaid *J. A.* would have complied with ſuch their reaſonable requeſts, as in juſtice and equity he ought to have done. *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *J. A.* combining and confederating himſelf to and with the ſaid *J. C.* and *C.* his wife, and to and with divers other perſons at preſent unknown to your orator and oratrix, whoſe names, when diſcovered, your orator and oratrix pray may be inſerted herein, with apt words to charge them, contriving how to defraud your orator and oratrix, and to defeat your oratrix of the benefit intended by the deviſe in the ſaid will, he the ſaid *J. A.* her uncle, refuſes to give or render to your orator and oratrix, any account whatſoever of the ſaid teſtator's perſonal eſtate, or of the rents, iſſues and profits of the ſaid real eſtate, and to pay what is due to your orator in right of your oratrix, or to let your orator into poſſeſſion of the ſaid real eſtate; the ſaid *J. A.* ſometimes pretending, that the perſonal eſtate of the ſaid *B. A.* the teſtator, was very ſmall and inconſiderable in value, and not ſufficient to pay the debts, legacies, and funeral expences of the ſaid teſtator; whereas your orator and oratrix charge, and ſo the truth is, that the ſaid teſtator died poſſeſſed of a conſiderable perſonal eſtate, much more than ſufficient to pay all his juſt debts, legacies and funeral expences, with a great overplus; your orator and oratrix charging, that the ſaid *J. A.* hath, out of the monies ariſing from the perſonal eſtate of the ſaid teſtator, paid all the teſtator's debts, legacies and funeral expences, and after payment thereof, having a great overplus in his hands, did lend out to ſeveral perſons on mortgages, bonds and other ſecurities, ſeveral large ſums of money, and hath

received

received the interest thereof, and applied the same to his own use; and at other times the said *J. A.* pretends, that the rents, issues and profits of the real estate devised by the said testator, are so small, that they will not amount to, or be sufficient to reimburse and satisfy him for the charges and expences he hath been at in the maintenance and education of the said *B. A.* the son and your oratrix, but that there will be a considerable sum due to him on the balance of accounts for such maintenance and education: Whereas your orator and oratrix do charge, that the real estate devised by the testator to his son *B. A.* was and is of the yearly value of ——— and upwards, and that the real estate devised by the said testator to the said *B. A.* his son and your oratrix, was and is of the yearly value of———and upwards, amounting together to ——— a year and upwards; and your orator and oratrix do charge, and doubt not but to prove, that the said *J. A.* expended and laid out but very little thereof for the maintenance and education of your oratrix and her said brother *B. A.* the manner of their education being very private and no way expensive; and at other times the said *J. A.* pretends, that the said *J. T.* the other executor named in the will of the said testator, or the said *C.* your oratrix's mother, possessed themselves of all, or greatest part of the personal estate of the said testator, and that they, or one of them, received the rents, issues and profits of the real estate ever since the testator's death, and that he the said *J. A.* did not intermeddle therewith; and at other times the said *J. A.* doth acknowledge and confess, that he has been, and is the only acting executor under the said testator's will, and that he hath received all the said testator's personal estate to a considerable value, and that he hath also received the rents,

issues

iſſues and profits of the ſaid real eſtates deviſed by the ſaid teſtator as aforeſaid; but then the ſaid *J. A.* pretends, that he did lend out all, or a great part thereof, to divers perſons at intereſt on mortgages, bonds, notes and other ſecurities, intending the ſame for the benefit of your oratrix, but that ſuch perſons have failed in the world and become inſolvent, ſo that the money lent to them, or the moſt of them, cannot now be got in or recovered; and the ſaid *J. A.* pretends, as he intended the benefit of your oratrix in lending out the ſaid truſt-money, he is not, nor ought to be, accountable for any loſſes that have happened, or ſhall hereafter happen on that account; more eſpecially, as the perſon or perſons, to whom he ſo lent the ſame, was and were, at the time of his ſo lending the ſame, in very good circumſtances, and reputed to be very rich; but how much of the truſt-money, or to whom, or when, or upon what ſecurities the ſame was ſo lent, he the ſaid *J. A.* refuſes to diſcover; All which actings and doings of the ſaid *J. A.* and the other confederates, are contrary to right, equity and good conſcience, and tend to the great injury of your orator and oratrix. **In tender conſideration** whereof, and foraſmuch as matters of this nature are moſt properly cognizable and relievable in a court of equity before your Lordſhip, and in regard your orator and oratrix cannot compel the ſaid *J. A.* to account for the ſaid teſtator's perſonal eſtate, and the rents and profits of his real eſtate, or the payment of what is juſtly due and owing to your orator and oratrix under the will of the ſaid teſtator, but by the aid and aſſiſtance of a court of equity: **To the end** therefore that the ſaid *J. A. H. C.* and *C.* his wife, may upon their ſeveral corporal oaths, true and perfect anſwer make to all and ſingular the premiſſes, as fully and particularly as

if

if the ſame were here again repeated and interrogated, and that the ſaid *J. A.* may ſet forth, whether the ſaid *B. A.* your oratrix's father, did not make ſuch laſt will and teſtament as herein before is ſet forth, or any other, and what will; and whether the ſaid *B. A.* the teſtator, did not depart this life on or about the —— day of —— 1729. without altering or revoking the ſaid will; and whether upon his death the ſaid *J. A.* alone did not prove the ſame in the prerogative court of *Canterbury*, or in any other, and what eccleſiaſtical court; and whether the ſaid *J. A.* did not, by virtue thereof, receive and get into his hands, the cuſtody, poſſeſſion or power, of all, or ſuch part of the teſtator's perſonal eſtate as he could come by; and that the ſaid *J. A.* may ſet forth a true and perfect account of all and ſingular the perſonal eſtate of the ſaid teſtator which he died poſſeſſed of, or intitled unto, and the natures, kinds, quantities and qualities thereof, and in what the ſame conſiſted, and how much, and what part thereof, came to the hands of the ſaid *J. A.* or to the hands, cuſtody, power or poſſeſſion of any other perſon or perſons for his uſe, and how and in what manner the ſame has been paid, applied, or diſpoſed of, and how much and what part thereof remains unpaid or undiſpoſed of, and where, and in whoſe hands, cuſtody or power, all or any part thereof now is or are; and whether the ſaid *J. A.* or who elſe on the death of the ſaid teſtator, did enter upon and take poſſeſſion of the real eſtate which the ſaid teſtator died ſeiſed of, and received the rents, iſſues and profits thereof; and that the ſaid confederates may ſet forth a juſt and true rental or particular of the ſaid real eſtate, and where the ſame lieth and is ſituate, and by whom occupied or tenanted, and the yearly and other value there-

of, as well of ſuch part of the ſaid real eſtate deviſed by the ſaid teſtator to his ſon *B. A.* and his heirs, as that part thereof deviſed to the ſaid *B. A.* the ſon, and your oratrix, and their heirs, and may ſet forth who hath or have received the rents, iſſues and profits thereof ſince the teſtator's death, and how the ſame hath been applied and diſpoſed of, and to whom and when, and who now is or are in the perception of the ſaid rents, iſſues and profits thereof; and that the ſaid confederates may anſwer and ſet forth by whom, and in what manner the ſaid *B. A.* the ſon and your oratrix were maintained and educated, and who hath had the care and bringing them up ſince the teſtator's death, to the time of the death of the ſaid *B. A.* the ſon, and from that time to the time of the intermarriage of your orator and oratrix, and may ſet forth how much yearly, and otherwiſe, hath been paid, laid out and expended for ſuch maintenance and education; and may ſet forth whether the ſaid *C.* your oratrix's ſaid mother did not, on or about the time herein before for that purpoſe mentioned, intermarry with the ſaid *H. C.* and whether the ſaid *B. A.* the ſon, did not depart this life in his infancy, about the month of —— 1731. and whether upon his death your oratrix, as his only ſiſter and heir at law, did not become, and is not well intitled to, ſuch part of the ſaid teſtator's real eſtate, as was deviſed by the ſaid teſtator to the ſaid *B. A.* the ſon, and his heirs, and alſo to the moiety or half part of all other the teſtator's real eſtate, deviſed by him to the ſaid *B. A.* the ſon jointly with your oratrix; and that the ſaid *J. A.* may alſo ſet forth, whether the ſaid *J. T.* as one of the executors under the ſaid will, or otherwiſe, to his knowledge or belief, ever received any, and what part of the perſonal eſtate, or the rents and pro-

fits of the real eſtate of the ſaid teſtator, or whether the ſaid *J. T.* as one of the executors under the ſaid will, or otherwiſe, to his knowledge or belief, ever received any, or what part of the perſonal eſtate, or the rents and profits of the real eſtate of the ſaid teſtator, or whether the ſaid *J. T.* did not abſolutely refuſe to act therein, and leave the whole management and care thereof to him the ſaid *J. A.* and whether the ſaid *J. A.* did not accordingly alone act under the ſaid will, and poſſeſs himſelf of all the ſaid teſtator's perſonal eſtate, and enter upon and take poſſeſſion of all the teſtator's real eſtate, and receive the rents, iſſues and profits thereof; and that the ſaid confederates may anſwer and ſet forth, whether your orator and oratrix did not intermarry in or about the month of ——— laſt paſt, and whether they have not many times, and when, ſince their intermarriage, both by themſelves and friends, applied to the ſaid *J. A.* to have an account of the perſonal eſtate, and the rents and profits of the real eſtate of the ſaid teſtator, and to be paid what, upon ſuch account, ſhould appear to be due and owing to your orator in right of your oratrix; and whether the ſaid *J. A.* did not, and for what reaſon, refuſe to give or render ſuch account, or to pay your orator and oratrix any money on account thereof, or what did the ſaid *J. A.* ſay or declare when ſuch application was made to him by or on the behalf of your orator and oratrix; and that the ſaid *C.* may ſet forth, whether ſhe hath received her legacy of two hundred pounds, given her by the will of the ſaid teſtator, and when, and from whom, ſhe ſo received the ſame; and that the ſaid *H. C.* and *C.* may ſet forth, whether they, or either, and which of them, have received any, and what part of the ſaid teſtator's perſonal eſtate, or the rents, iſſues and profits

profits of the ſaid teſtator's real eſtate; and that the ſaid *J. A.* may anſwer and ſet forth, whether he did at any time, and when, lend to any, and what perſon or perſons, and to whom by name, any, and what part of the ſaid truſt-money, at intereſt, ariſing from the perſonal eſtate, or the rents and profits of the real eſtate of the ſaid teſtator, upon any, and what ſecurities; and may ſet forth, how much he hath received from time to time as intereſt thereon, and whether the ſecurity or ſecurities he took for the money he ſo lent, is, or are good and ſufficient ſecurities for the money he ſo lent, or whether the ſame are not very inſufficient, uncertain and precarious; and whether the monies ſo lent by him on ſuch ſecurities, is not, or are likely to be loſt, by the ſcantineſs of the ſaid ſecurities, or by the deaths or inſolvencies of the perſons to whom the ſame were lent; and that the ſaid *J. A.* may be decreed to come to a juſt and fair account with your orator and oratrix for the perſonal eſtate of the ſaid teſtator, and for the rents, iſſues and profits of the ſaid real eſtate deviſed by the ſaid teſtator to the ſaid *B. A.* the ſon, and to your oratrix, which hath come to his hands, cuſtody, poſſeſſion or power, or which hath been received by him, or any other perſon or perſons by his order, and for his uſe; and that he may pay to your orator and oratrix what, upon ſuch account, ſhall appear to be due to them; and that the ſaid *J. A.* may aſſign over, and deliver to your orator and oratrix, all ſuch ſecurities which hath, or have been entered into and given for ſuch part of the truſt-money as hath been lent out by the ſaid *J. A.* or any other perſon or perſons; and that your orator and oratrix may be let into poſſeſſion of the ſaid real eſtate whereof the ſaid teſtator died ſeiſed; and that your orator and oratrix may

have

have ſuch further and other relief in the premiſſes, as to your Lordſhip ſhall ſeem meet. *May it pleaſe your Lordſhip*, &c.

A bill brought by creditors for an account of teſtator's perſonal eſtate, and to be paid their debts.

To the Right Honourable, &c.

HUMBLY complaining, ſhew unto your Lordſhip, your orators and oratrixes *J. C.* of the pariſh of —— in the county of ——, gentleman, *S. G.* of the ſame pariſh and county, ſpinſter, *S. B.* of the ſame pariſh and county, woollen draper, *A. W.* of —— in the county of —— butcher, *T. W.* of the ſame place, vintner, *J. N.* of the pariſh of —— in the county of ——, innkeeper, and *W. L.* of —— in the county of ——, yeoman, creditors of *E. S.* late of —— in the county of ——, Eſq; deceaſed, That the ſaid *E. S.* in his life-time, and at the time of his deceaſe, was juſtly indebted to your orators and oratrixes reſpectively in the ſeveral ſums, and in ſuch manner as herein after mentioned, that is to ſay, To your orator *J. C.* on a bond or obligation given by the ſaid *E. S.* unto your ſaid orator *J. C.* bearing date on or about the twentieth day of *January* which was in the year of our Lord one thouſand ſeven hundred and thirty, of the penalty of 232 *l.* conditioned for the payment of one hundred and ſixteen pounds four ſhillings, and intereſt, on the twenty-third day of *July* one thouſand ſeven hundred and thirty-five; and the ſaid *E. S.* having paid part thereof to your orator, there is now due to your orator the principal ſum of forty-one pounds

fourteen ſhillings, and no more, together with intereſt for the ſame, from the ninth day of *June* one thouſand ſeven hundred and thirty-five; and the ſaid *E. S.* was as aforeſaid likewiſe indebted to your oratrix *S. G.* in another bond or obligation alſo given by him the ſaid *E. S.* unto your ſaid oratrix, bearing date on or about the twenty-ſeventh day of the ſame *January* which was in the year of our Lord one thouſand ſeven hundred and thirty-four, of the penalty of fourteen hundred pounds, conditioned for the payment of ſeven hundred pounds, together with intereſt for the ſame, on the twenty-ſeventh day of *Auguſt* one thouſand ſeven hundred and thirty-five, whereon the whole principal money ſtill remained due, together with all intereſt for the ſame, from the ſaid twenty-ſeventh day of *January* one thouſand ſeven hundred and thirty-four, and was alſo indebted to your oratrix, on ſimple contract, in the further ſum of one hundred pounds and upwards, for monies lent and paid to and for the uſe of the ſaid *E. S.* by your ſaid oratrix; and the ſaid *E. S.* was indebted to your orator *S. B.* in the ſum of fifty pounds and upwards, for divers goods ſold and delivered unto the ſaid *E. S.* by your ſaid orator for which your ſaid orator delivered him a bill in his life-time, and which yet remains unſatisfied and unpaid; To your oratrix *A. W.* in the ſum of twenty-two pounds and upwards, for butchers meat ſold and delivered unto him, and for the uſe of the ſaid *E. S.* by your ſaid oratrix, for which your oratrix alſo delivered him a bill in his life-time; — to your orator *T. W.* in the ſum of twenty-four pounds, and upwards, for wine ſold and delivered to him the ſaid *E. S.* by your ſaid orator, for which your orator alſo delivered him a bill in his life-time, and which remains unpaid and unſatisfied; — to

your

your orator *J. N.* in the ſum of ten pounds and upwards, for the ſtabling and keeping of a horſe for the ſaid *E. S.* for which your orator likewiſe delivered him a bill in his life-time, and is ſtill unpaid and unſatisfied; and he was as aforeſaid likewiſe indebted to your orator *W. L.* his late ſervant, on a promiſſory note given by him unto your ſaid orator, for the ſum of twenty-five pounds twelve ſhillings, bearing date the eighteenth day of *November* one thouſand ſeven hundred and thirty-four, which was for the ballance of an account then ſtated between him and your ſaid orator; beſides which ſaid ſeveral ſums herein before mentioned to be due to your ſaid orators and oratrixes reſpectively, he the ſaid *E. S.* was juſtly indebted to ſeveral other perſons in divers other ſums of money at the time of his death, to a conſiderable amount or value in the whole, which have not ſince been ſatisfied: And your orators and oratrixes further ſhew unto your Lordſhip, that the ſaid *E. S.* being thus indebted, and being poſſeſſed of a conſiderable perſonal eſtate, more than ſufficient to ſatisfy all his juſt debts, the ſaid *E. S.* departed this life on or about the —— day of ——, having firſt made his laſt will and teſtament in writing, bearing date on or about the firſt day of *January* which was in the year of our Lord one thouſand ſeven hundred and twenty-eight, and thereby gave and bequeathed unto one *J. D.* by the name and deſcription of Mrs. *D*——, daughter to Mr. *L*——, of —— in the county of ——, all his eſtate both perſonal and temporal, except ſome ſmall legacies therein mentioned; and therein reciting, that he had two thouſand ſeven hundred pounds in the hands of *W. T.* Eſq; of ——, he gave and bequeathed the ſame to the ſaid Mrs. *D.* for her own uſe and benefit,

as therein is mentioned, being the only perſon that he eſteemed and loved; and upon his deceaſe, he having appointed no executor to his will, on or about the twenty-third day of *November* one thouſand ſeven hundred and thirty-ſix, letters of adminiſtration with the will annexed, were granted out of the prerogative court of *Canterbury* to the ſaid *J. D.* who thereupon poſſeſſed herſelf of all the ſaid teſtator's perſonal eſtate, except a debt due from *T. F.* hereafter named as executor of his uncle *T. F.* who had received ſeveral conſiderable ſums of money, as hereafter is mentioned, out of the rents and profits of the ſaid *E. S.* or of his father's eſtate and otherwiſe, for which he was and is accountable to the ſaid *E. S.* And your orators and oratrixes farther ſhew, that the ſaid *J. D.* having poſſeſſed herſelf of the ſaid teſtator's perſonal eſtate as aforeſaid, your orators and oratrixes applied themſelves in a fair and friendly manner to be paid their ſaid reſpective debts out of the ſame, as in equity and juſtice ſhe ought to have done. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *J. D.* combining and confederating to and with the ſaid *T. F.* of ———, who is nephew and executor of *T. F.* lately deceaſed, and to and with divers other perſons at preſent unknown to your orators and oratrixes, whoſe names when diſcovered, your orators and oratrixes pray may be parties hereto, with apt words to charge them, how to defeat and defraud your orators and oratrixes in the premiſſes, and the ſaid *J. D.* being in low circumſtances, your orators and oratrixes do charge, that ſhe hath applied the ſaid teſtator's perſonal eſtate which has come to her hands, or the greateſt part thereof, to her own uſe, and has waſted the ſame, and neglects to pay any part thereof to your orators and oratrixes, or to

any

any or either of them, towards their or any, or either of their ſaid reſpective demands, and ſometimes pretends, that the ſaid *E. S.* did not make ſuch laſt will and teſtament as herein before is mentioned, and that adminiſtration with the will annexed, was not at or about the time herein before for that purpoſe mentioned, or at any other time, granted to her out of the prerogative court of *Canterbury*, or out of any other eccleſiaſtical court; or if the ſame was ſo granted to her, that nevertheleſs ſhe hath not, by virtue thereof, received any part of the ſaid *E. S.*'s perſonal eſtate, at leaſt not ſufficient to pay your orators and oratrixes their ſaid reſpective demands; and the ſaid *J. D.* at other times pretends, that the ſaid *E. S.* died poſſeſſed of little or no perſonal eſtate but what ſhall come from the hands of the ſaid *T. F.* the nephew, as executor to the ſaid *T. F.* his ſaid uncle deceaſed, and that until ſhe ſhall receive what is due from him as aforeſaid, that ſhe ſhall be incapable of paying your orators and oratrixes, or any or either of them, their ſaid reſpective debts, or any part thereof; whereas ſhe well knows, (as the truth is,) that ſhe hath received very conſiderable aſſets from the eſtate of the ſaid *E. S.* and more than ſufficient to pay the whole of your orators and oratrixes demands, and particularly ſhe has received from the ſaid *W. T.* the ſaid ſum of two thouſand ſeven hundred pounds, or ſome very great ſum of money, and the ſaid *J. D.* refuſes to call the ſaid *T. F.* to an account for a very large ſum of money due from him relating thereto, which may prevent her accounting for the ſame, and deprive your orators and oratrixes of their ſaid juſt demands; and at other times ſhe the ſaid *J. D.* threatens to call in the ſaid debt, and to apply it to her own private uſe, and declares ſhe will not pay your orators and

oratrixes ſaid ſeveral demands, although ſhe well knows the ſame, and every of them, to be juſtly due to your orators and oratrixes as aforeſaid; and the ſaid *T. F.* pretends, that neither he nor his ſaid uncle *T. F.* was or were at any time indebted to the ſaid *E. S.* whereas the contrary does plainly appear by a report made by Maſter *K.* one of the Maſters of this honourable court, in a cauſe depending in this honourable court, wherein *C. D.* and others were plaintiffs, and the ſaid *T. F.* and others were defendants, or in ſome other cauſe wherein the ſaid *T. F.* was party; and that there was due to the ſaid *E. S.* the ſum of two thouſand one hundred and ſix pounds five ſhillings and nine pence half-penny, and the further ſum of two hundred and thirty-two pounds ſixteen ſhillings and nine pence, making together the ſum of two thouſand three hundred and thirty-nine pounds two ſhillings and ſixpence half-penny, or ſome ſuch ſum of money, which remains yet unpaid and unſatisfied; or the ſaid report is to that or ſome ſuch effect, and which the ſaid *T. F.* has admitted to be true; And your orators and oratrixes aver and expreſsly charge, as the truth really is, that the ſaid *T. F.* now is indebted to his ſaid eſtate in that or ſome greater ſum of money, and has received from his ſaid uncle's eſtate more than ſufficient to pay the ſaid demand, though he ſometimes denies the ſame; at other times he admits that he has received ſufficient aſſets of his ſaid uncle's to pay the ſaid debts, but inſiſts that he has paid the ſaid *J. D.* all that was due to her ſaid teſtator, and has a diſcharge or diſcharges for the ſame; whereas your orators and oratrixes inſiſt, that the ſaid *J. D.* has ſtill a good ſubſiſting demand on him for the ſame or ſome other very large ſum of money due to her ſaid teſtator; but the ſaid *T. F.* inſiſts, he is only accountable to her

for

for any debt due to the ſaid teſtator, and threatens to pay her the ſame; in which caſe your orators and oratrixes would have little hopes of relief from the needy and inſolvent circumſtances of the ſaid *J. D.* who, as your orators and oratrixes charge, has but a ſmall ſupport, except only what ſhe got or expects to receive from the eſtate of the ſaid *E. S.* All which actings and doings of them the ſaid confederates are contrary to right, equity and good conſcience, and tend to your orators and oratrixes their apparent wrong and injury. **In tender conſideration** whereof, and foraſmuch as your orators and oratrixes witneſſes, who could prove the truth of all and ſingular the premiſſes aforeſaid, are either dead or gone into parts beyond the ſeas, remote and unknown to your orators and oratrixes, they your ſaid orators and oratrixes are only and properly relievable in a court of equity, where matters of fraud and diſcovery are moſt properly cognizable; **To the end** therefore, that the ſaid *J. D. T. F.* and the reſt of the confederates, when diſcovered, may upon their ſeveral and reſpective corporal oaths, true and perfect anſwer make to all and ſingular the premiſſes, as fully and particularly as if the ſame were herein again repeated, and interrogated, according to their and each of their knowledge, remembrance and belief, and more particularly, that the ſaid *J. D.* may ſet forth and diſcover, whether the ſaid *E. S.* did not make ſuch laſt will and teſtament in writing, of ſuch date, and to ſuch purport and effect, as herein before for that purpoſe is mentioned, or any and what other will and teſtament and of what other date, and to what other purport or effect; and whether ſhe the ſaid *J. D.* did not take out letters of adminiſtration with the ſaid will annexed, and had the ſame granted to her out of the prerogative court of *Canterbury*, or out of any

and what other eccleſiaſtical court, at or about the time herein before for that purpoſe mentioned, or at what other time, and whether, on the having ſuch adminiſtration granted to her, ſhe did not poſſeſs herſelf of ſo much of the ſaid teſtator's perſonal eſtate, as was ſufficient to pay your orators and oratrixes ſaid demands, or how much thereof, and particularly whether ſhe did not receive of and from the ſaid *W. T.* the ſum of two thouſand ſeven hundred pounds, or any and what other ſum of money; and may ſet forth, whether ſhe does not refuſe to call the ſaid *T. F.* to an account for what is due from him to the eſtate of the ſaid *E. S.* and whether ſhe has not come to ſome, and to what private agreement relating thereto; and whether ſhe does not ſometimes threaten to call in the ſame and apply it to her own private uſe; and whether ſhe does not know or believe, that your orators and oratrixes ſaid demands are juſt and fair demands, or which of them are not, and for what reaſon ſhe believes the ſame; and that the ſaid *T. F.* may ſet forth, whether his ſaid uncle was not indebted to the ſaid *E. S.* in a very large ſum of money, and whether he the ſaid *T. F.* hath not been lately reported debtor to the ſaid eſtate in the ſaid ſeveral ſums of two thouſand one hundred and ſix pounds five ſhillings and nine pence half-penny, and two hundred and thirty-two pounds ſixteen ſhillings and nine pence, or what other ſum or ſums of money; and may ſet forth what he knows or believes in his conſcience is really due from him to the ſaid *J. D.* as adminiſtratrix of the ſaid *E. S.* and whether he has not ſufficient aſſets of his ſaid teſtator's to pay and ſatisfy the ſame; and that the ſaid *J. D.* may ſet forth and diſcover, whether ſhe hath not applied the aſſets come to her hands, or ſome and what part thereof, to her own uſe, and may admit

mit aſſets ſufficient to pay your orators and oratrixes their ſaid reſpective demands, and that ſhe may ſet forth a full, true, juſt and particular account of the ſaid teſtator's perſonal eſtate, with the natures, quantities, qualities, and true and full values thereof, and what hath come to her hands, cuſtody or power, or to the hands, cuſtody or power of any other perſon or perſons in truſt for her, or to her uſe, to her knowledge and belief, or with her privity, conſent or procurement; and how ſhe or they have applied the ſame, and that the ſaid *J. D.* may pay and ſatisfy your orators and oratrixes ſaid demands; and that in the mean time the monies in the hands of the ſaid *T. F.* or ſo much thereof as ſhall be ſufficient to pay and ſatisfy your orators and oratrixes ſaid reſpective demands, with coſts of this ſuit, may be ſtayed in his hands by injunction of this honourable court; and that in caſe the ſaid *J. D.* ſhall not pay and ſatisfy your orators and oratrixes their ſaid ſeveral and reſpective demands, that then the ſaid *T. F.* may be decreed to pay and ſatisfy the ſame unto your orators and oratrixes out of the monies remaining in his hands, belonging or relating to the ſaid *E. S.*'s perſonal eſtate; and that your orators and oratrixes may have ſuch other and further relief in the premiſſes, as to your Lordſhip ſhall ſeem meet. May it pleaſe your Lordſhip, *&c.*

A bill by huſband and wife for a bond-debt to the wife, while ſole, againſt the heir at law and widow, for an account and ſatisfaction out of the real and perſonal eſtate of the teſtator.

To the Right Honourable —— Lord High Chancellor of Great Britain.

HUMBLY complaining, ſhew unto your Lordſhip, your orator and oratrix *J. H.* of *K.* in the county of *C.* yeoman, and *J.* his wife, That on or about the 13th day of *February* which was in the year of our Lord 1740. your ſaid oratrix *J.* (before her intermarriage with your orator,) advanced and lent unto *J. N.* late of *Orton* in the county of *C.* joyner, (ſince deceaſed,) the ſum of ——for ſecuring the repayment whereof with intereſt, after the rate of ten pence for every pound by the year, he the ſaid *J. N.* did enter into one bond or writing obligatory, bearing date the ſaid 13th day of *February* 1740. by which bond he the ſaid *J. N.* by the name and deſcription of *J. N. &c.* did acknowledge himſelf to be bound, and did bind himſelf, his heirs, executors and adminiſtrators unto your oratrix then *J. T.* by the name and deſcription of, *&c.* in the ſum of—— of lawful money of *Great Britain*, with condition thereunder written to be void upon payment of the ſaid ſum of ——— with intereſt for the ſame as aforeſaid, unto your oratrix by her then name of *J. T.* her executors, adminiſtrators or aſſigns, upon the 2d day of *February* then next enſuing, or elſe the ſaid bond or obligation was to be and remain in full force and virtue, as by the ſaid bond or writing obligatory under the hand and ſeal of the

the ſaid *J. N.* bearing date as aforeſaid, and ready to be produced to this honourable court (relation being thereunto had) it doth and may more at large appear; And your orator and oratrix further ſhew unto your Lordſhip, that on or about the 17th Day of *December* laſt, (and before any part of the ſaid principal monies and intereſt due on the ſaid bond was paid off or diſcharged,) the ſaid *J. N.* departed this life, leaving *J. N.* his eldeſt ſon and heir at law, and *S. N.* his widow, and at the time of his death was not only ſeiſed in fee-ſimple of and in divers lands, meſſuages and tenements in the pariſh of *O.* and elſewhere in the ſaid county of *C.* but likewiſe poſſeſſed, or otherwiſe well intitled unto a conſiderable perſonal eſtate, conſiſting of beds, bedding, braſs, pewter, and all other ſorts of houſhold-ſtuff, corn, hay, horſes, cows, oxen, ſheep, and other live cattle, ploughs, carts, and other implements of huſbandry, money due upon bonds, bills and other ſpecialties, and other debts due upon ſimple contract and accounts; after whoſe death they the ſaid *J. N.* his ſon, and *S. N.* his widow, did not only immediately enter upon all and every the meſſuages, lands, tenements and real eſtate (whereof the ſaid *J. N.* deceaſed was ſo ſeiſed of and intitled unto at the time of his death) but have alſo entered upon and poſſeſſed themſelves of all the goods, chattels and perſonal eſtate which he the ſaid *J. N.* the father died poſſeſſed of, and which were much more than ſufficient not only to have paid your oratrix her juſt debt, but all other the debts owing by the ſaid *J. N.* at the time of his deceaſe; and your orator *J. H.* having on or about the 23d day of *December* laſt intermarried with your oratrix *J. T.* he thereby became well intitled (in your oratrix's right) to the ſaid debt of——and intereſt due upon the ſaid bond, and hath therefore oftentimes in a friendly manner

manner applied to the ſaid *J. N.* and *S. N.* his mother, for payment of the ſaid debt, which ſometimes they promiſed to pay unto your orator and oratrix, as in juſtice and equity they ought. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *J. N.* and *S. N.* his mother, combining and confederating themſelves together, and to and with divers perſons as yet unknown to your orator and oratrix, whoſe names when diſcovered your orator and oratrix pray may be inſerted in this their bill, with apt words to charge them as defendants, now to defraud and defeat your orator and oratrix of their ſaid debt, they the ſaid confederates do ſet up divers pretences to divide and ſwallow up all the real and perſonal eſtate of the ſaid *J. N.* the father; and having got into their, or one of their hands and cuſtody, all the deeds, evidences and writings relating to the ſaid real and perſonal eſtate by combination between them, pretend that the ſaid *J. N.* the father did on or before his marriage with the ſaid *S.* his wife, by a ſettlement made in writing in conſideration of the ſaid marriage, and previous thereto, grant and convey all and ſingular the meſſuages, lands, tenements and hereditaments whereof he died ſeiſed or poſſeſſed, to the uſe of her the ſaid *S.* for her life for her jointure, in caſe ſhe ſhould ſurvive the ſaid *J. N.* her huſband, with remainder after their deaths to their firſt and all other their ſons reſpectively in tail male, with covenants, that the ſame were free from all incumbrances; and it is alſo alledged, that there are ſeveral incumbrances by mortgage of the ſaid premiſſes made by the ſaid *J. N.* the father, precedent in point of time to the ſaid marriage ſettlement, and that the ſaid *S.* hath paid the principal debts out of her ſaid late huſband's perſonal aſſets which are come to her hands, and that ſhe will take aſſignments of

the ſaid mortgages to herſelf, or ſome other in truſt for her, to protect her jointure lands and the inheritance thereof ſettled, or pretended to be ſettled upon her as aforeſaid; and the ſaid *J. N.* the ſon doth pretend and give out in ſpeeches, that his ſaid father was not at the time of his death ſeiſed of or intitled unto any lands or real eſtate whatſoever; whereas he the ſaid defendant doth very well know (and ſo muſt confeſs) that his ſaid father did, but a ſhort time before his death, purchaſe of *J. B.* Eſq; or his truſtees, Lords of the manor of *O.* in the ſaid county of *C.* ſeveral meſſuages and tenements, and alſo ſeveral parcels or ſhares of common ground improved and taken up from the moors and waſtes of the ſaid manor, containing at leaſt 150 acres of ground worth at leaſt fifteen pounds an acre to be ſold, which are now deſcended and come unto the ſaid *J. N.* his ſon as his heir at law, and ought (as your orator and oratrix are adviſed) to be applied towards payment of the debts of the ſaid *J. N.* the father; yet the ſame lying in common and intermixed with the lands and grounds of divers other perſons, the ſaid *J. N.* the ſon refuſes to diſcover or make known to your orator and oratrix how or by what marks or bounds the ſaid lands are meared or marked out, or in what particular places the ſame lie; and your orator and oratrix do expreſsly charge, that the perſonal affets of the ſaid *J. N.* deceaſed, which have come to the hands and poſſeſſion of the ſaid *S. N.* is of the value of —— at the leaſt, the particulars and true value whereof ſhe refuſeth to diſcover; and although your orator and oratrix have frequently applied to the ſaid *S. N.* and *J. N.* her ſon, and deſired an account of the real and perſonal eſtate left by her ſaid huſband, yet they do ſeverally refuſe to give your orator and

oratrix

oratrix any account thereof, or to make your orator and oratrix any ſatisfaction in the premiſſes, but inſtead thereof threaten to take all advantages which by the ſtrict rules of law they are or ſhall be intitled unto, and thereby directly to deprive your orator and oratrix of all remedies for recovering their ſaid juſt debt. All which actings, doings and pretences of the ſaid confederates, are not only contrary to all right, equity and good conſcience, but tend to the great loſs and damage of your orator and oratrix. **In tender conſideration** whereof, and foraſmuch as your orator's and oratrix's witneſſes, who would prove the truth of all and ſingular the premiſſes, are either dead or gone into places remote beyond the ſeas, far diſtant from, and unknown to your orator and oratrix, who cannot expect to have the benefit of their teſtimonies; and foraſmuch as your orator and oratrix have no relief in the premiſſes, ſave only by the favourable aid and aſſiſtance of this honourable court: **To the end** therefore, that the ſaid *S. N.* and *J. N.* her ſon, and other the confederates, when diſcovered, may true and perfect anſwer make to all and ſingular the premiſſes aforeſaid, and that as fully and particularly as if the ſame were here again repeated and interrogated, and more eſpecially, that the ſaid *S. N.* and *J. N.* her ſon, may anſwer and ſet forth, whether the ſaid *J. N.* the father did not in his life-time, and at or about the time herein before for that purpoſe mentioned, borrow and take up at intereſt of and from your oratrix the ſum of —— aforeſaid, and whether he did not, for ſecuring the repayment thereof with intereſt, as herein before is mentioned, make and execute ſuch bond, and payable at ſuch time as herein before is ſet forth, or give any other and what ſecurity for the ſame; and whether before payment thereof, the ſaid

J. N.

J. N. the elder did not depart this life ſeiſed, poſſeſſed or intitled unto ſuch real and perſonal eſtate as aforeſaid, or other and what real and perſonal eſtate and effects; and that the ſaid *S. N.* may ſet forth a true and perfect inventory of all and ſingular the goods and chattels of the ſaid *J. N.* her deceaſed huſband, which is come to her hands, cuſtody or power, or to the hands, cuſtody, power or poſſeſſion of any other perſon or perſons in truſt for her, or by her privity, or to her belief, and the particulars whereof the ſame conſiſted, and the real and true value of each particular, not by appraiſement only, but as each particular hath been ſold at, and if not ſold, as it is in truth worth to be ſold, and at ſuch rates, as (if your orator pleaſes) he may take the ſame; and alſo what debts were owing to the ſaid *J. N.* deceaſed, at the time of his death, and by whom, and whether the ſame were debts due upon bonds, bills, or any and what other ſecurities, or how otherwiſe due and owing, and whether ſhe, or any by her order and privity, and who by name, have or hath received the ſame, or any and which of them, or any and what ſatisfaction for the ſame, and from whom and when, and what debts are yet ſtanding out and unpaid, and from whom due, and upon account, and alſo what debts owing by her ſaid huſband have been paid or compounded by her or her order, and may ſet forth each particular payment by her made, and to whom, when, and upon what ſecurities, or how otherwiſe due; and that the ſaid confederates, and particularly the ſaid *J. N.* may ſet forth and diſcover what meſſuages, lands or tenements his ſaid father *J. N.* died ſeiſed or poſſeſſed of, or was intitled unto, and where the ſame lie, and more eſpecially whether the ſaid *J. N.* his father (or ſome or one of

his anceſtors, and under whom he claimed) did not ſhortly before his death, and when, purchaſe of *J. B.* herein before named, or his truſtees, lords of the manor of *O.* aforeſaid, one or more meſſuages and tenements, and ſeveral and how many acres or parcels of ground taken up from the moors and waſtes of the ſaid manor, and where the ſame lie, and the particular yearly value of each parcel or eſtate, and how the ſame is meaſured out and bounded, and whether he hath, or claims to have, any right, title, intereſt, claim and demand unto, or out of the ſaid premiſſes, and by what deeds or conveyances, and may ſet forth the dates, parties names and conſiderations therein contained, or the contents thereof; and that the ſaid confederates may anſwer and ſet forth whether they do not know, or have heard and believe, that your orator intermarried with your oratrix in or about the month of *December* laſt, or at what other time; and that the ſaid *S. N.* and *J. N.* her ſon may come to a juſt and fair account with your orator and oratrix, touching the real and perſonal eſtate and effects of the ſaid *J. N.* deceaſed, and that your orator and oratrix may thereout be paid and ſatisfied all ſuch monies as ſhall (on a fair and juſt account) appear to be juſtly due to them for principal and intereſt upon the ſaid bond ſo given as aforeſaid unto your oratrix, and that your orator and oratrix may be further and otherwiſe relieved in the premiſſes according to equity and good conſcience; May it pleaſe your Lordſhip, *&c.*

A

A bill brought by a creditor, as well on behalf of himſelf as other creditors who ſhall come in and contribute to the expence of the ſuit, to be paid debts, and for ſale of the teſtator's real eſtate, in caſe his perſonal eſtate ſhall not be ſufficient; and to perpetuate the teſtimony of witneſſes.

To the Right Honourable, &c.

HUMBLY complaining, ſheweth unto your Lordſhip, your orator *R. B.* of *B. &c.* as well on the behalf of himſelf as other the creditors of *B. A.* late of, *&c.* deceaſed, who ſhall come in and contribute to the expence of this ſuit, that the ſaid *B. A.* being in his life-time, and at the time of his death, ſeiſed in fee of a conſiderable real eſtate, of which he had power to diſpoſe, and alſo poſſeſſed of a conſiderable perſonal eſtate; and being ſo ſeiſed and poſſeſſed, he the ſaid *B. A.* did duly make and publiſh his laſt will and teſtament in writing, bearing date on or about the nineteenth day of *January* which was in the year of our Lord 1738. in the preſence of three credible witneſſes, who alſo ſubſcribed their names as witneſſes thereto in the ſaid teſtator's preſence; and the ſaid teſtator did therein and thereby give and deviſe to his ſon-in-law *W. S.* and to his grandſon *B. J.* and their heirs, all and every his meſſuages, lands, tenements and hereditaments whatſoever; **In truſt** to ſell and diſpoſe of the ſame, and by the monies ariſing by ſuch ſale to pay all his juſt debts; and the overplus (if any) and alſo all his goods, chattels, rights, credits, and perſonal eſtate, he gave to the ſaid *W. S.* and *B. J.* equally to be divided

between them, and made them executors of his ſaid will. And your orator further ſheweth, that the ſaid teſtator, ſoon after making of his ſaid will, departed this life (*to wit*) on or about the —— day of ——— which was in the year of our Lord 17 without altering or revoking the ſame, and the ſaid executors, or one of them, duly proved the ſame, and undertook the burthen of the execution thereof, as by the ſaid will and probate, relation being thereunto had, may more fully and at large appear: And your orator further ſheweth unto your Lordſhip, that the ſaid *B. A.* was indebted to your orator in the ſum of forty pounds by note of his hand bearing date on or about the twentieth day of *February* 1736. whereby the ſaid teſtator promiſed to pay your orator or his order the ſaid ſum of forty pounds, with lawful intereſt for the ſame, upon demand, for value received, as by the ſaid promiſſory note under the hand of the ſaid *B. A.* now in your orator's cuſtody ready and to be produced, and to which your orator craves leave to refer, may appear. And the ſaid teſtator was alſo indebted to ſeveral other perſons in divers conſiderable ſums of money. And your orator ſheweth unto your Lordſhip, that upon the death of the ſaid *B. A.* the ſaid *W. S.* and *B. J.* by virtue of or under colour of the ſaid will, entred into the receipt of the rents and profits of all the ſaid real eſtate of the ſaid *B. A.* and alſo poſſeſſed themſelves of all the goods, chattels, rights, credits and perſonal eſtate of the ſaid teſtator of a very conſiderable value, and much more than will be ſufficient to pay and diſcharge all the juſt debts of the ſaid teſtator; and your orator hath ſeveral times applied himſelf to the ſaid *W. S.* and *B. J.* for a ſatisfaction of the ſaid demand; But the ſaid *W. S.* and *B. J.* combining and confederating

rating to and with *W. J.* and *E.* his wife (which ſaid *E.* is only daughter and heir at law of the ſaid teſtator) and to and with divers other perſons at preſent unknown to your orator, whoſe names when diſcovered your orator prays may be made parties hereto, with apt words to charge them, give out and pretend, that they have ſeveral claims upon the ſaid eſtates, by means whereof your orator is delayed and prevented from receiving his debt or any part thereof; and ſometimes the ſaid executors admit the ſaid teſtator's perſonal eſtate will be ſufficient to pay all his juſt debts, but inſiſt that they have not been able to collect or get in the ſame, and therefore cannot give your orator any account thereof, or make him any ſatisfaction for his ſaid debt; and at other times the ſaid executors pretend that the ſaid teſtator's perſonal eſtate is very ſmall and inconſiderable, and is not near ſufficient to pay his juſt debts; and the ſaid *W. J.* and *E.* his wife do inſiſt that the ſaid teſtator's perſonal eſtate is more than ſufficient to pay all his juſt debts, and therefore they inſiſt that the ſaid real eſtate ought not to be ſold, and refuſe to join in the ſale of the ſaid eſtate, pretending that the ſaid will was not duly executed, and that therefore the ſame deſcended to the ſaid *E. J.* as heir at law to the ſaid teſtator. **All which actings and doings** of the ſaid confederates are contrary to equity and good conſcience, and tend to the great wrong and injury of your orator who is properly relievable in this honourable court. **To the end therefore,** that the ſaid *W. S. B. J. J. W.* and *E.* his wife may true and perfect anſwer make to all and ſingular the matters and premiſſes as fully and particularly as if the ſame were here again repeated and interrogated, and particularly that they may ſet forth whether the ſaid *B. A.* was

not in his life-time, and at the time of his death, ſeiſed in fee or otherwiſe, of and in ſome good eſtate of inheritance of a conſiderable, or what real eſtate, and whereof he had a full power to diſpoſe, and whether he the ſaid teſtator did not make and duly execute ſuch will, and of ſuch date as herein before ſet forth, or any other and what will, and whether he was not of ſound and diſpoſing mind, memory and underſtanding, at the time of making and publiſhing his ſaid laſt will, and whether the witneſſes to the ſaid will did not duly atteſt and ſubſcribe their names as witneſſes thereto in the preſence of the ſaid teſtator, and when he died; and that the ſaid confederates may ſet forth, whether the ſaid teſtator was not in his life-time, and at the time of his death, indebted to your orator in the manner herein before ſet forth, or in any other and what manner, as they know, have heard, or believe; and that the ſaid executors may ſet forth, whether they, or either and which of them, have or hath, ſince the death of the ſaid teſtator, proved the ſaid will, and got into poſſeſſion of all the perſonal eſtate of the ſaid teſtator, and alſo entred upon the receipt of the rents and profits of the real eſtate, and may either admit aſſets ſufficient to pay the demands of your orator, or otherwiſe may ſet forth a true and particular account of the ſaid teſtator's perſonal eſtate, and what the ſame did or doth conſiſt of, with the true and real value thereof, and of every part thereof, and what part thereof hath come to the hands, cuſtody or power of them the ſaid confederates, or to the hands, cuſtody or power of any other perſon or perſons, and whom, by them or by or with their or either of their order or privity, and for their or either of their uſe; and may ſet forth how and in what manner they have

paid,

paid, applied or diſpoſed of the ſame, and of every part thereof; and that the ſaid confederates may likewiſe ſet forth a full, true and particular account of the ſaid real eſtate ſo deviſed to be ſold, and where the ſame lies, together with the names of the ſeveral perſons in whoſe tenure the ſame now is, and ever ſince the death of the ſaid teſtator hath been, together with the true and real annual rents and values thereof; and may ſet forth an account of the ſeveral ſums of money which they or any other perſon or perſons, and who for their or either of their uſe, have or hath received out of, or by the rents and profits of the ſaid real eſtates ſince the death of the ſaid teſtator; and that the ſaid confederates may ſet forth what right, title, intereſt, property, claim or demand they or any, and which of them reſpectively have, or pretend to have or claim to the ſaid real or perſonal eſtates of the ſaid teſtator; and that in caſe the ſaid perſonal eſtate of the ſaid teſtator ſhall not be ſufficient to pay and ſatisfy your orator's ſaid demands, that then the ſaid real eſtate may be ſold, or ſo much thereof as ſhall be neceſſary, and that out of the money ariſing by ſuch ſale, your orator and others the creditors of the ſaid teſtator, who ſhall come in and contribute to the expences of this ſuit, may be paid their ſaid debts with intereſt and coſts, and that all proper parties may join in the ſale of the ſaid real eſtate in ſuch manner as this honourable court ſhall direct, and that the ſeveral witneſſes to the ſaid will may be examined as to the execution thereof, and their teſtimony perpetuated; and that your orator may be further and otherwiſe relieved in all and ſingular the premiſſes, as the nature and circumſtance of his caſe ſhall require, and as to your Lordſhip ſhall ſeem moſt meet; May it pleaſe your Lordſhip, &c.

A bill to ſecure a jointure, and to ſupply a defective execution of a power.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix *M. H.* the widow and relict, and alſo the ſole adminiſtratrix and reſiduary legatee named in the laſt will and teſtament of *E. H.* of——in the county of——, Eſq; your oratrix's late huſband deceaſed, That by indentures of leaſe and releaſe bearing date reſpectively, the leaſe the twenty-ſecond, and the releaſe the twenty-third day of *July* which was in the year of our Lord 1715, the releaſe being quinquepartite, and made, or mentioned to be made, between your oratrix's late huſband by his then name, and addition of *E. H.* of—— in the county of——, Eſq; and *M. H.* only ſon and heir apparent of the ſaid *E. H.* of the firſt part, and *A. H.* of *C.* in the county of——, widow, relict and deviſee for life of *M. H.* late of——aforeſaid, Eſq; deceaſed, and *R. W.* ſpinſter, one of the daughters of Sir *J. W.* late of—— in the county of——, Bart. deceaſed, and niece of the ſaid *A. H.* of the ſecond part, *W. H.* of——in the county of——, Eſq; and *J. A.* of *Gray's Inn* in the county of *Middleſex*, Eſq; of the third part, Sir *C. P.* of——, *London*, Knight, and *A. K.* of the pariſh of——, *London*, Gent. of the fourth part, and *T. S.* of——in the county of *Middleſex*, Gent. of the fifth part, It is witneſſed, that they the ſaid *E. H.* and *M. H.* for the conſiderations therein mentioned, and for ſettling the premiſſes therein and herein after mentioned, did grant and releaſe (amongſt other things) all that manor, or reputed manor or lordſhip, and farms of *D. B.* in——in the county of *Kent*, with the rights, members and appurtenances thereof, and all other manors, or reputed

reputed manors, farms, lands, tenements and hereditaments whatsoever of them the said *E. H.* and *M. H.* or either of them in *D. B.* or elsewhere in the county of *Kent*, to hold to the said *W. H.* and *J. A.* their heirs and assigns; and the said premisses are thereby declared to be and stand limited to the said trustees, to the use and behoof of the said *E. H.* for his life without impeachment of waste, with remainder to the said trustees during the life of the said *E.* to preserve contingent remainders; and after the deceases of the said *E. H.* and of dame *E.* his then wife, then to the use of the said *M. H.* and the heirs of his body, with remainder to the first and every other son and sons of the said *E. H.* by the said dame *E.* or any other his after-taken wife or wives, in tail male, remainder to the use of *F. H. A. H.* and *E. H.* daughters of the said *E. H.* and all and every other the daughters of the said *E. H.* as tenants in common, and not as jointenants, and the heirs of their bodies lawfully issuing; and for want of such issue of any such daughter or daughters, then as to the part or parts of her or them so dying without issue, to the use of the other and others of the said daughter and daughters and the heirs of their bodies by way of cross-remainders, till all and every such daughter and daughters are dead without issue, with remainder to the said *M. H.* his heirs and assigns for ever; and your oratrix further sheweth, that it is provided, declared and agreed by the said indenture of release, that if it should happen the said dame *E. H.* should die in the life-time of the said *E. H.* and he should survive her, and should afterwards marry any other woman or women, then and in such case it should be lawful for him to settle and assure so much of the said manor or reputed manor, or lordship and premisses, as should be of, and

amount to, or ſhould not exceed the value of ſix hundred pounds *per annum*, for a jointure and proviſion for ſuch after-taken wife, or wives, for her or their natural life or lives only, as by the ſaid in part recited indenture (executed by the ſaid *E.* and *M. H.* and others the parties thereto) now in the cuſtody or power of the ſaid *M. H.* and to which for greater certainty as to the exact date and contents thereof, your oratrix hereby craves leave to refer herſelf, relation being thereunto had, may more fully appear. And your oratrix further ſheweth, that by indentures of leaſe and releaſe bearing date, the leaſe the twenty-fourth, and the releaſe the twenty-fifth day of *May* in the year of our Lord 1725, the releaſe being tripartite, and made between the ſaid *E. H.* of the firſt part, your oratrix by her then name and addition of *M. C.* ſpinſter, one of the daughters of Sir *C. C.* late of——in the county of——, Bart. deceaſed, of the ſecond part, Sir *R. W.* of —— in the county of——, Bart. and *C. W.* of—— *London*, Eſq; of the third part, after reciting the ſaid indenture of leaſe and releaſe, of the twenty-ſecond and twenty-third days of *July* 1715. and particularly the ſaid power thereby reſerved; and alſo after reciting that a marriage was then intended ſhortly to be had and ſolemnized between the ſaid *E. H.* and your oratrix, it is witneſſed, that in conſideration of the ſaid intended marriage, and of the ſum of two thouſand pounds, being the marriage portion of your ſaid oratrix paid to the ſaid *E. H.* before the ſealing and delivering thereof, the receipt whereof is thereby acknowledged, and for divers other good cauſes and conſiderations therein mentioned, he the ſaid *E. H.* did grant, bargain, ſell, releaſe and confirm, unto the ſaid Sir *R. W.* and *C. W.* and to their heirs, all that the ſaid manor and premiſſes, with the

the appurtenances herein before particularly ſet forth, and the reverſion and reverſions, remainder and remainders, rents, iſſues and profits thereof, To hold the ſame, and every part thereof, unto the ſaid Sir *R. W.* and *C. W.* their heirs and aſſigns, to the uſe and behoof of the ſaid *E. H.* until the ſaid intended marriage, and after the ſolemnization thereof, to the uſe of the ſaid Sir *R. W.* and *C. W.* and their heirs, for and during the natural life of your oratrix, upon truſt that they and the ſurvivor of them, or the heirs or aſſigns of ſuch ſurvivor, ſhould yearly and every year during the joint lives of the ſaid *E. H.* and your oratrix, out of the rents, iſſues and profits of the ſaid premiſſes, pay or cauſe to be paid into the proper hands of your oratrix, or into the hands of ſuch other perſon or perſons as ſhe your ſaid oratrix ſhould direct and appoint, the clear ſum of one hundred pounds by four equal payments in the year, in manner in the ſaid indentures mentioned, to and for your ſaid oratrix's ſole, ſeparate and peculiar uſe and benefit, and not to be ſubject to the controul, debts, judgments or intermeddling of the ſaid *E. H.* but the act and receipt, acts and receipts of your oratrix alone, and notwithſtanding her coverture, or of ſuch perſon as your oratrix ſhould appoint to receive the ſame, to be a good and ſufficient diſcharge for the ſame; and after the deceaſe of the ſaid *E. H.* in caſe your oratrix ſhould ſurvive him, upon truſt that they the ſaid truſtees ſhould, out of the rents, iſſues and profits of the ſaid premiſſes, pay or cauſe to be paid unto your oratrix, yearly and every year during her natural life, the clear and full ſum of three hundred pounds by four equal payments in the year, in manner therein mentioned, which is thereby agreed and declared to be in full for her jointure, and in lieu and full recom-

recompence, ſatisfaction and diſcharge, of and from her dower or thirds at common law, and all and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments whatſoever of him the ſaid *E. H.* or which he at any time then after ſhould happen to be ſeiſed of or intitled unto; and upon further truſt that the ſaid truſtees ſhould and would permit and ſuffer the ſaid *E. H.* during his natural life, and ſuch other perſon or perſons as ſhould after his death be intitled to the remainder of the rents, iſſues or profits of the ſaid premiſſes, or would have been ſo intitled, if the ſaid indenture had never been made, from and after payment of the ſaid yearly ſums of one hundred pounds and three hundred pounds reſpectively, to take and receive to his and their own proper uſe and uſes reſpectively, all and every the reſt, reſidue and remainder of the rents, iſſues and profits of the ſaid premiſſes. Provided nevertheleſs, and it is declared and agreed by the ſame indenture of releaſe, that in caſe the ſaid *E. H.* and ſuch other perſon and perſons as ſhould be intitled to the next and immediate remainder or reverſion of the ſaid premiſſes, ſhould yearly and every year pay or cauſe to be paid unto your oratrix, for and during her natural life, the ſaid yearly ſums of one hundred pounds and three hundred pounds reſpectively as your oratrix ſhould be intitled thereto, and in ſuch manner as the ſame were reſpectively made payable as aforeſaid, then no uſe or benefit ſhould be made of the eſtate thereby made and granted; the ſame being only intended to be made uſe of in default of ſuch payment by the ſaid *E. H.* and ſuch other perſon and perſons as ſhould be intitled to the remainder or reverſion of the ſaid premiſſes as aforeſaid; and the ſaid *E. H.* for himſelf,

ſelf, his heirs, executors and adminiſtrators, did by the ſaid indenture covenant, promiſe and agree, to and with the ſaid Sir *R. W.* and *C. W.* their executors, adminiſtrators and aſſigns, that he the ſaid *E. H.* had full power, good right, and lawful and abſolute authority, to grant, releaſe and convey unto the ſaid Sir *R. W.* and *C. W.* and their heirs, all and ſingular the aforeſaid premiſſes in manner aforeſaid, and that the ſame were ſufficient in value for the uſes, intents and purpoſes aforeſaid, and that it ſhould and might be lawful to and for them the ſaid Sir *R. W.* and *C. W.* and their heirs, to hold and enjoy the ſame accordingly, without the lawful let, ſuit, trouble, denial, hindrance, moleſtation, diſturbance or interruption of him the ſaid *E. H.* his heirs or aſſigns, or any other perſon or perſons lawfully claiming or to claim by, from or under him, them or any of them, and alſo that the ſaid *E. H.* ſhould and would, at any time during his life, make, do, ſuffer and execute all ſuch further and other lawful and reaſonable acts, deviſes and aſſurances for the more perfect aſſuring the ſaid premiſſes, with their appurtenances, unto them the ſaid Sir *R. W.* and *C. W.* and their heirs and aſſigns, for and during the natural life of your oratrix, upon the truſts, and to the intents and purpoſes aforeſaid, as they or their counſel ſhould adviſe or require, as by one part of the ſaid recited indenture duly executed by the ſaid *E. H.* and now in the cuſtody of your oratrix ready to be produced as this honourable court ſhall direct, may more fully and at large appear, and to which for greater certainty, as to the exact date and contents thereof, your oratrix hereby craves leave to refer herſelf: And your oratrix further ſheweth, that ſoon after the executing of the laſt in part recited indentures in the ſaid year of our Lord

1725,

1725, the ſaid marriage between the ſaid *E. H.* and your oratrix was accordingly had and ſolemnized; and your oratrix further ſheweth, that by indentures of leaſe and releaſe bearing date, the leaſe the 27th and the releaſe the 28th day of *September* in the year of our Lord 1735, the releaſe being tripartite, and made between the ſaid *E. H.* of the firſt part, your oratrix *M. H.* then wife of the ſaid *E. H.* and then late *M. C.* ſpinſter, of the ſecond part, the ſaid Sir *R. W.* Bart. and the ſaid *C. W.* Eſq; of the third part, after reciting the ſaid herein before in part recited indenture of leaſe and releaſe, dated the 22d and 23d days of *July* 1715, and the proviſo therein contained for the inabling the ſaid *E. H.* in caſe he ſhould happen to ſurvive his then wife dame *E. H.* to ſettle and aſſure ſo much of the ſaid manor and premiſſes therein and herein before mentioned as ſhould amount to, and ſhould not exceed ſix hundred pounds *per annum* for a jointure and proviſion for ſuch wife or wives as he ſhould afterwards marry, and after reciting (as the truth was and is) that the ſaid dame *E.* was dead, and the ſaid *E. H.* did her ſurvive, and had then lately intermarried with your oratrix, and alſo after reciting the ſaid therein before in part recited indentures of leaſe and releaſe, dated the twenty-fourth and twenty-fifth days of *May* 1725 then laſt, and that the ſaid intended marriage had been ſolemnized between the ſaid *E. H.* and your oratrix; and alſo after further reciting that the ſaid *E. H.* had not then made any larger or other proviſion for your oratrix than as above mentioned, nor then fully executed his ſaid power of making a jointure of or to ſuch yearly value for any other after-taken wife, in caſe of his ſurviving the ſaid dame *E.* his late wife deceaſed, and being therefore minded to make a further jointure and proviſion

viſion for your oratrix, in caſe ſhe ſurvived him, by fully executing the power to him given and reſerved in that behalf by the ſaid herein before recited indenture quinquepartite of releaſe, dated the ſaid twenty-third day of *July* 1715. it is witneſſed, that in conſideration of the premiſſes, and of the great love and affection he had and bore to your ſaid oratrix his then wife, and for making her a further jointure and proviſion for her life, in caſe your oratrix ſhould ſurvive him, and for the fully executing and compleating his ſaid power, and for divers other conſiderations therein mentioned, he the ſaid *E. H.* did grant, bargain, ſell, releaſe, ratify and confirm unto the ſaid Sir *R. W.* and *C. W.* and to their heirs, all that the ſaid manor and premiſſes herein before particularly ſet forth, with the appurtenances, and the reverſion and reverſions, remainder and remainders, rents, iſſues and profits thereof, to hold the ſaid premiſſes, and every part thereof, to them the ſaid Sir *R. W.* and *C. W.* their heirs and aſſigns, for and during the natural life of your ſaid oratrix, upon truſt that they the ſaid Sir *R. W.* and *C. W.* and the ſurvivor of them, or the heirs or aſſigns of ſuch ſurvivor, ſhould and would from and after the deceaſe of your oratrix's ſaid huſband *E. H.* in caſe your ſaid oratrix ſhould him ſurvive, out of the rents, iſſues and profits of the ſaid premiſſes, pay or cauſe to be paid unto your oratrix yearly, and every year during her natural life, the further clear and full ſum of three hundred pounds by equal payments in manner as in the ſaid indenture mentioned; and upon further truſt, that they the ſaid truſtees ſhould and would permit and ſuffer the ſaid *E. H.* during his natural life, and ſuch perſon or perſons as ſhould after his death be intitled to the remainder of the rents, iſſues and profits

profits of the ſaid premiſſes, or would have been ſo intitled if the ſaid indentures had never been made, from and after payment of the ſaid further clear and full yearly ſum of three hundred pounds, to take and receive to his and their proper uſe and uſes reſpectively, all and every the reſt, reſidue and remainder of the rents, iſſues and profits of the ſaid premiſſes. Provided nevertheleſs, and it is thereby declared and agreed by the ſaid indenture of releaſe, that in caſe the ſaid *E. H.* and ſuch other perſon and perſons as ſhould be intitled to the next and immediate remainder or reverſion of the ſaid premiſſes, ſhould yearly and every year pay, or cauſe to be paid unto your oratrix, for and during her natural life, the ſaid further clear and yearly ſum of three hundred pounds, in ſuch manner as the ſame was made payable as aforeſaid, then no uſe or benefit ſhould be made of the eſtate thereby made and granted; the ſame being only intended to be made uſe of in default of ſuch payment by the ſaid *E. H.* and ſuch other perſon and perſons as ſhould be intitled to the remainder or reverſion of the ſaid premiſſes as aforeſaid; and the ſaid *E. H.* for himſelf, his heirs, executors and adminiſtrators, did alſo by the ſaid indenture covenant, promiſe, grant and agree, with the ſaid Sir *R. W.* and *C. W.* that the ſaid *E. H.* had full power, good right, lawful and abſolute authority to grant, releaſe and convey unto the ſaid Sir *R. W.* and *C. W.* and their heirs, all and ſingular the aforeſaid premiſſes, in manner aforeſaid, and that the ſame were ſufficient in value for the uſes, intents and purpoſes aforeſaid; and that it ſhould and might be lawful, to and for them the ſaid *R. W.* and *C. W.* and their heirs, to hold and enjoy the ſame accordingly, without the let, ſuit, trouble, denial, eviction, ejection, moleſtation, diſturbance

banee or interruption of him the ſaid *E. H.* his heirs or aſſigns, or any other perſon lawfully claiming or to claim by, from or under him, them, or any of them, and alſo that the ſaid *E. H.* ſhould and would at any time then after, during his life, make, do, ſuffer and execute, all ſuch further and other lawful and reaſonable acts, deviſes and aſſurances, to the more perfect aſſuring the ſaid premiſſes with their appurtenances unto them the ſaid Sir *R. W.* and *C. W.* and their heirs and aſſigns, for and during the natural life of your oratrix, upon the truſts, and to the intents and purpoſes aforeſaid, as they or their counſel ſhould adviſe or require, as by one part of the ſaid in part recited indenture duly executed by the ſaid *E. H.* and now in the cuſtody of your oratrix, and ready to be produced, as this honourable court ſhall direct, relation being thereunto had, may more fully and at large appear; and to which, for greater certainty as to the exact date and contents thereof, your oratrix humbly craves leave to refer herſelf. And your oratrix further ſheweth, that by indentures of leaſe and releaſe, bearing date reſpectively, the leaſe the fourteenth, and releaſe the fifteenth days of *January* in the year of our Lord 1731. the releaſe being tripartite, and made or mentioned to be made between the ſaid *E. H.* your oratrix's ſaid late huſband of the firſt part, your ſaid oratrix of the ſecond part, and the ſaid Sir *R. W.* and *C. W.* of the third part, after reciting the ſaid herein before in part recited indentures of leaſe and releaſe dated the twenty-ſecond and twenty-third days of *July* 1715. and the proviſo therein contained for enabling the ſaid *E. H.* in caſe he ſhould happen to ſurvive his then wife dame *E.* to ſettle ſo much of the ſaid manor and premiſſes therein and herein beforementioned, as ſhould

amount

amount to, and ſhould not exceed ſix hundred pounds *per annum* for a jointure, and proviſion for ſuch wife or wives, as he ſhould afterwards marry; and after reciting that the ſaid *E. H.* was dead; and alſo after reciting the ſaid herein before in part recited indentures of leaſe and releaſe dated the twenty-firſt and twenty-fifth days of *May* 1715. and alſo after reciting that the ſaid marriage therein mentioned to be intended to be had and ſolemnized between the ſaid *E. H.* and your oratrix, had been had and ſolemnized; and alſo after reciting the ſaid recited indenture of leaſe and releaſe dated the twenty-ſeventh and twenty-eighth days of *September* 1725. it was and is witneſſed, that in conſideration of the premiſſes, and for the further, better, and more effectual ſecuring the payment of the ſaid ſeveral and reſpective yearly ſums of one hundred pounds, three hundred pounds, and three hundred pounds in and by the ſaid ſeveral herein before in part recited indentures mentioned and ſecured to be paid to your oratrix, as a jointure and proviſion for her life, in caſe ſhe your ſaid oratrix ſhould happen to ſurvive the ſaid *E. H.* and for divers other conſiderations therein mentioned, he the ſaid *E. H.* did grant, bargain, ſell, releaſe, ratify and confirm unto the ſaid Sir *R. W.* and *C. W.* and their heirs, all that the manor and premiſſes, with the appurtenances herein before particularly ſet forth, and the reverſion and reverſions, remainder and remainders, rents, iſſues and profits thereof, and of every part thereof, unto the ſaid Sir *R. W.* and *C. W.* and their heirs and aſſigns, for and during the natural life of your oratrix, upon truſt, that they and the ſurvivor of them, or the heirs or aſſigns of ſuch ſurvivor, ſhould yearly and every year during the joint lives of the ſaid *E. H.* and your oratrix, out of the rents, iſſues and profits of the ſaid premiſſes, pay or cauſe to be paid into the

the proper hands of your oratrix, or into the hands of ſuch other perſon or perſons as ſhe your ſaid oratrix ſhould direct and appoint, the clear ſum of one hundred pounds, by four equal payments in the year, in the manner in the ſaid indenture mentioned, to and for your oratrix's ſole, ſeparate and particular uſe and benefit, and not to be ſubject to the control, debts, engagements or intermeddling of the ſaid *E. H.* but the act and receipt, acts and receipts of your oratrix alone, notwithſtanding her coverture, or of ſuch perſon as your oratrix ſhould appoint to receive the ſame, to be a good and ſufficient diſcharge for the ſame; and after the deceaſe of the ſaid *E. H.* in caſe your oratrix ſhould ſurvive him, upon truſt, that they the ſaid truſtees ſhould out of the rents, iſſues and profits of the premiſſes, pay or cauſe to be paid unto your oratrix yearly and every year during her natural life, the clear and full ſum of ſix hundred pounds by four equal payments in the year, in the manner therein mentioned, which is thereby declared and agreed to be in full for her jointure, and in lieu and full recompence, ſatisfaction, and diſcharge of and for her dower or thirds at common law, and all and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments whatſoever of him the ſaid *E. H.* or which at any time then after ſhould happen to be ſeiſed of or intitled unto; and upon further truſt, that they the ſaid truſtees ſhould and would permit and ſuffer the ſaid *E. H.* during his life, and ſuch other perſons or perſon as ſhould after his death be intitled unto the remainder of the rents, iſſues and profits of the ſaid premiſſes, or would have been ſo intitled if the ſaid indenture had never been made from and after payment of the ſaid

yearly ſum of one hundred and ſix hundred pounds reſpectively, to take and receive to his and their own proper uſe and uſes reſpectively all and every the reſt, reſidue, and remainder of the rents, iſſues and profits of the ſaid premiſſes: Provided nevertheleſs, and it is declared and agreed by the ſaid now recited indenture of releaſe, that in caſe the ſaid *E. H.* and ſuch other perſon and perſons as ſhould be limited to the next and immediate remainder and reverſion of the ſaid premiſſes, ſhould yearly and every year pay or cauſe to be paid unto your oratrix, for and during her natural life, the ſaid yearly ſum of one hundred pounds and ſix hundred pounds reſpectively, in ſuch manner as the ſame is made payable as aforeſaid, then no uſe or benefit ſhould be made of the eſtate thereby; and by the above recited indentures of leaſe and releaſe reſpectively made and granted to the ſaid Sir *R. W.* and *C. W.* or either of them, the ſame being only intended to be made uſe of in default of ſuch payments by the ſaid *E. H.* or ſuch other perſon or perſons as ſhould be intitled to the remainder or reverſion of the ſaid premiſſes as aforeſaid; and it is by the ſaid now recited indenture declared and agreed, that the ſaid above recited indenture of ſettlement on your oratrix, and alſo the ſaid now recited indenture was and were made to ſecure to your oratrix the ſaid ſum of one hundred pounds *per ann.* during the joint lives of the ſaid *E. H.* and your oratrix; and after the deceaſe of the ſaid *E. H.* in caſe your oratrix ſhould him ſurvive, to ſecure to your oratrix a jointure not exceeding in the whole ſix hundred pounds *per annum*, according to the power reſerved and given to the ſaid *E. H.* in and by the firſt above recited indentures of ſettlement. And the ſaid *E. H.* for himſelf, his heirs, executors and adminiſtrators, did by the now

now recited indenture of releaſe and covenant, promiſe and grant to and with the ſaid Sir *R. W.* and *C. H.* their executors, adminiſtrators and aſſigns, that he the ſaid *E. H.* had full power, good right, and lawful and abſolute authority to grant, releaſe and convey unto the ſaid Sir *R. W.* and *C. W.* and their heirs, all and ſingular the aforeſaid premiſſes in manner aforeſaid; and that the ſame were ſufficient in value for the uſes, intents and purpoſes aforeſaid; and that it ſhould and might be lawful to and for them the ſaid Sir *R. W.* and *C. W.* and their heirs, to hold and enjoy the ſame accordingly, without the lawful let, ſuit, trouble, denial, eviction, ejection, moleſtation, diſturbance or interruption of him the ſaid *E. H.* his heirs or aſſigns, or any other perſon or perſons lawfully claiming or to claim by, from or under him, them or any of them; and alſo that the ſaid *E. H.* ſhould and would at any time then after during his life make, do, acknowledge, ſuffer and execute ſuch further and other reaſonable acts, deviſes and aſſurances for the more perfect aſſuring the ſaid premiſſes with their appurtenances unto them the ſaid Sir *R. W.* and *C. W.* and their heirs and aſſigns, during the natural life of your oratrix, upon the truſts, and to the intents and purpoſes aforeſaid, as they or their counſel ſhould adviſe or require, as by one part of the ſaid indentures duly executed by the ſaid *E. H.* and now in the cuſtody of your oratrix ready to be produced, as this honourable court ſhall direct, relation being thereto had, may more fully and at large appear; and to which for greater certainty as to the exact dates and contents thereof your oratrix hereby craves leave to refer herſelf. And your oratrix further ſheweth, that on or about the thirteenth day of *October* in the year of our Lord 1736. the ſaid *E. H.* your oratrix's late

huſband departed this life leaving iſſue the ſaid *M. H.* his only ſon and heir at law. Your oratrix further ſheweth unto your Lordſhip, that upon or immediately after the ſaid teſtator's death the ſaid *M. H.* entered upon and took poſſeſſion of all and ſingular the ſaid manors and premiſſes ſo ſettled as aforeſaid, which your oratrix permitted him to do, well hoping that he the ſaid *M. H.* would either have paid or cauſed to have been paid unto your oratrix, or unto ſuch perſon or perſons as ſhe ſhould appoint, the ſaid clear yearly ſum of ſix hundred pounds in manner as the ſame is directed to be paid by the ſaid ſeveral herein before recited indentures of ſettlement, or ſome or one of them, or elſe that he would have ſet out and conveyed to your oratrix, or to ſuch perſon or perſons as ſhe ſhould appoint, ſo much and ſuch part of the ſaid premiſſes as would make ſix hundred pounds a year for your oratrix's jointure, eſpecially as it does manifeſtly appear (as your oratrix doth charge and inſiſt from the ſaid indentures) that it was the intent and meaning of your oratrix's ſaid late huſband, and of all the parties to the ſaid indentures that your oratrix ſhould have ſuch jointure made to her as he was enabled to make by virtue of the ſaid firſt mentioned indentures of leaſe and releaſe of the 22 & 23 of *July* 1715. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *M. H.* hath entered into a combination and confederacy with the ſaid Sir *R. W.* and *C. W.* and with divers other perſons at preſent unknown to your oratrix, whoſe names when diſcovered your oratrix prays may be inſerted in this her bill, with apt words to charge them as parties hereto, how to injure your oratrix in the premiſſes, and to deprive and defeat your oratrix of the benefit of the ſaid ſeveral indentures of ſettlement; and in order thereto the ſaid

M. H. and his ſaid confederates ſometimes pretend that no ſuch indentures of ſettlement as are herein before mentioned to bear date on the ſaid twenty-ſecond and twenty-third days of *July* 1715. were ever made and executed; or that if the ſame were ſo made and executed, yet that there is no ſuch proviſo contained therein for enabling the ſaid teſtator *E. H.* (your oratrix's late huſband) to ſettle or aſſure ſo much of the ſaid premiſſes herein contained as ſhould be of and amount to, or ſhould not exceed the value of ſix hundred pounds a year for a jointure, and proviſion for ſuch wife or wives as he ſhould then after marry, in caſe he ſhould happen to ſurvive his wife *E. H.* Whereas the ſaid *M. H.* and his ſaid confederates well know the truth to be, and your oratrix doth expreſly charge that ſuch indentures of ſuch date and contents, and with ſuch proviſo therein contained as herein before mentioned, were duly made and executed; And at other times the ſaid *M. H.* and his ſaid confederates will admit the ſame, and will alſo admit that ſuch ſeveral other indentures aforeſaid were duly made and executed: But then he and they inſiſt that the ſame are not a due and legal execution by the ſaid *E. H.* of the power given to him by the ſaid proviſo in the before mentioned indentures of ſettlement of the twenty-ſecond and twenty-third days of *July* 1715, ſuch power not having been, as he and they ſay, well purſued by the ſaid *E. H.* in regard that he ought not, and hath no power to ſettle any ſum of money upon your oratrix, by way or in the nature of a rent-charge, but only to ſettle and convey ſo much of the ſaid premiſſes as would amount to ſix hundred pounds a year by way of jointure for your oratrix, and particularly as to the ſaid deeds made in *September* 1725, and in *January* 1731, he the ſaid *M. H.* ſays and inſiſts, that they being

made after marriage are voluntary and fraudulent as againſt him; whereas your oratrix doth charge and inſiſt that all the ſaid deeds are good and valid deeds, and that as the ſaid firſt mentioned deed of ſettlement, to which the ſaid *M. H.* was a party, gave your oratrix's ſaid late huſband a power of making a jointure of ſix hundred pounds a year as aforeſaid, without mentioning whether the ſaid jointure ſhould be made before or after marriage, he might and had authority to execute ſuch power either before or after marriage, which fact the ſaid *M. H.* will at other times admit. But then he inſiſts, that the ſaid ſeveral ſettlements ſo made for your oratrix's benefit as aforeſaid are void, by the ſtrict rules of the common law, as not purſuing the ſaid power, and that the ſame being void at law ought not to be ſet up or inſiſted upon in a court of equity; whereas your oratrix doth charge and inſiſt, that ſuppoſing (but not admitting) the ſaid ſettlements to be void or voidable by the ſtrict rules of the common law, yet your oratrix's ſaid late huſband having by the ſaid ſettlements manifeſtly declared his intention of ſecuring to your oratrix a jointure of ſix hundred pounds a year, according to his ſaid power, the ſame ought to be ſecured to your oratrix accordingly by the ſaid *M. H.* out of the ſaid premiſſes; and if there is any defect in the execution of the ſaid power by your oratrix's ſaid late huſband, which at common law might be taken advantage of by the ſaid *M. H.* yet your oratrix doth charge and inſiſt, that ſuch defective execution ought to be ſupplied and made good in equity, ſo as to bind the ſaid eſtate and premiſſes into whoſe hands ſoever the ſame ſhall come. And your oratrix further ſheweth, that the ſaid Sir *R. W.* and *C. W.* have not acted in the truſt repoſed in them as aforeſaid, and ſay and inſiſt that they neither can nor will act therein

or in any other truſt for your oratrix without being directed thereto and indemnified therein by the decree of this honourable court. **In tender conſideration** whereof, and for as much as your oratrix can obtain no relief in the premiſſes, except in a court of equity, where matters of this nature are properly cognizable; **To the end therefore** that the ſaid *M. H.* Sir *R. W.* and *C. W.* and the reſt of the confederates, when diſcovered, may true and ſufficient anſwer make to all and ſingular the premiſſes, and that as fully, clearly and abſolutely as if the ſame were here again repeated and interrogated, and that not only as they know, but alſo as they remember, believe, or have heard; and more eſpecially, that the ſaid *M. H.* and his ſaid confederates may ſet forth, whether the ſeveral indentures of leaſe and releaſe as aforeſaid were not made, and by and between whom executed; and that the ſaid confederates may ſet forth, whether the ſaid *E. H.* did not intermarry with your oratrix at or about the time aforeſaid, or when elſe; and at or about what time did he die, and who hath received the rents and profits of the ſaid premiſſes ever ſince his death, and to what yearly amount, and who is now in receipt thereof; and that the ſaid *M. H.* may diſcover and produce the ſaid firſt mentioned indentures of leaſe and releaſe, and may either be decreed to pay your oratrix her ſaid rent-charge of ſix hundred pounds a year already due and hereafter to grow due, and that the ſame may be confirmed to be as this honourable court ſhall direct, or elſe that ſhe may have a conveyance of ſo much of the ſaid premiſſes as will amount to ſix hundred pounds a year decreed to be executed to her, or to ſuch perſon or perſons as ſhe ſhall appoint by the ſaid *M. H.* during her life, and that the defective execution of the ſaid power (if any)

may be ſupplied by this honourable court, ſo as to bind the ſaid eſtate and premiſſes, and that the ſaid *M. H.* may be decreed to account for the rents and profits of the ſaid premiſſes, and that your oratrix may be paid thereout what ſhall appear to be due to her for the arrears of her ſaid jointure, or intended jointure, and that the ſaid Sir *R. W.* and *C. W.* may be compelled to join in, do and execute ſuch acts and deeds as this honourable court ſhall think fit to direct, and that your oratrix may be further or otherwiſe relieved in all and ſingular the premiſſes as the nature and circumſtance of her caſe ſhall require, and as to your Lordſhip ſhall ſeem meet. May it pleaſe your Lordſhip, *&c.*

A bill to perfect a marriage ſettlement brought by a feme covert by her next friend and her truſtees.

To the Right Honourable, &c.

HUMBLY complaining ſhew unto your Lordſhip, your orators *A. B.* and *C. D.* of, *&c.* and your oratrix the Right Honourable *E.* Counteſs of *F.* formerly *E. H.* only child and daughter of *G. H.* of, *&c.* lately deceaſed, by *J. K.* Eſq; her next friend, That the Right Honourable *L.* Earl of *F.* being ſeiſed, or pretending to be ſeiſed of an eſtate in fee-ſimple or fee-tail, in divers manors, lands, tenements and hereditaments lying and being in the ſeveral counties of *M.* and *N.* of a very conſiderable yearly value, ſometime in the year 1735 made his addreſſes, by way of courtſhip, for marriage to the ſaid *E.* now Counteſs of *F.* and upon a treaty between the ſaid Earl and the ſaid *G. H.* the father of the ſaid Counteſs, (and previous

previous to the intermarriage) it was propoſed and agreed by the ſaid *G. H.* to give his daughter the ſum of ——— as her marriage portion, and —— more at the death of him and his wife; and the ſaid earl, in conſideration thereof, on his part propoſed to ſettle and aſſure divers manors, lands and hereditaments, effectually to ſecure a competent jointure upon your oratrix in caſe ſhe ſhould ſurvive the ſaid earl, and for a proviſion for the children that ſhould happen to be born of the ſaid marriage; and your orators and oratrix ſhew, that in order to anſwer theſe purpoſes, previous to the ſaid marriage by indentures of leaſe and releaſe, the releaſe bearing date on or about the 12th day of *May* 1735, and made between the ſaid *L.* earl of *F.* of the firſt part, the ſaid *G. H.* ſince deceaſed, and *E. H.* now your oratrix, and counteſs of *F.* of the ſecond part, and your orators, by the names of *A. B.* and *C. D.* of the third part, reciting, that a marriage was then intended (and ſince ſolemnized) between the ſaid earl of *F.* and your oratrix, and that the ſaid *G. H.* had agreed to give and advance as a marriage portion with his daughter the ſum of —— in preſent, and the further ſum of —— at the death of him the ſaid *G. H.* and his wife; and that in conſideration thereof, the ſaid earl ſhould ſettle ſuch annuity on his ſaid intended wife, and all and every the lands, tenements and hereditaments therein compriſed, to ſuch uſes and upon ſuch truſts, as therein is expreſſed; It is by the ſaid indenture of releaſe witneſſed, that in conſideration of the ſaid —— to him the ſaid *L.* earl of *F.* in hand paid by the ſaid *G. H.* as the preſent marriage portion of his daughter, and of the ſum of ——— ſecured to be paid as therein is mentioned, and for the making a proviſion for your oratrix, and for ſettling the manors, lands and

hereditaments

hereditaments therein mentioned, to ſuch uſes, and upon ſuch truſts as therein are expreſſed, the ſaid *L.* earl of *F.* granted and releaſed to your orators *A. B.* and *C. D.* all thoſe manors of *O. P.* and *Q.* in the ſeveral counties of *M.* and *N.* or one of them, and all meſſuages, farms, lands, tenements and hereditaments to the ſaid ſeveral manors belonging or appertaining, therein particularly deſcribed, lying and being in the ſeveral pariſhes of ——— and ——— in the ſaid ſeveral counties of *M.* and *N.* To hold the ſaid premiſſes unto your orators the ſaid *A. B.* and *C. D.* and their heirs, to the uſe of the ſaid *L.* earl of *F.* until the ſaid intended marriage ſhould take effect, remainder to the uſe of the ſaid *L.* earl of *F.* for life, without impeachment of waſte, remainder to the ſaid truſtees (meaning your orators) to preſerve contingent remainders during the life of the ſaid earl, remainder to the uſe and purpoſe that the ſaid *E. H.* (now your oratrix) might immediately after the deceaſe of the ſaid earl, have and receive a rent-charge of 1600*l.* during her life, in bar of her dower, remainder to your orators *A. B.* and *C. D.* for 99 years, upon truſt in caſe ſuch annuity ſhould be in arrear three months, that then they might raiſe the ſame out of the rents, iſſues and profits of the ſaid premiſſes; and upon further truſt, that until ſuch default, to permit and ſuffer the rents, iſſues and profits thereof, to be had or received by the perſon or perſons next in remainder; remainder to the uſe of the firſt and all other the ſons of the body of the ſaid earl, on the body of the ſaid *E. H.* to be begotten ſucceſſively in tail male, remainder to the uſe of the ſaid truſtees, their executors, adminiſtrators and aſſigns, for the term of 300 years, remainder to the right heirs of the ſaid *L.* earl of *F.* for ever; and the truſt

of

of the ſaid term of 300 years is by the ſaid indenture of releaſe declared to be, in caſe of failure of iſſue male of the ſaid intended marriage, for raiſing portions for daughters, and for a maintenance for them until the ſame ſhould be paid; and the ſaid earl thereby covenanted for himſelf, his heirs, executors and adminiſtrators, to and with the ſaid *A. B.* and *C. D.* their executors and adminiſtrators, that he notwithſtanding any act of his own or his anceſtors, was lawfully ſeiſed of the premiſſes in fee-ſimple or fee-tail, and that notwithſtanding any ſuch act as aforeſaid, he had in himſelf full and abſolute power to convey the ſaid manors, lands and hereditaments, to the uſes and upon the truſts therein expreſſed; and for the further and better aſſuring and conveying the ſaid manors, meſſuages, farms, lands, tenements, hereditaments and premiſſes thereby releaſed, to the ſeveral uſes, truſts, intents and purpoſes thereby declared concerning the ſame; It is thereby on the part of the ſaid *L.* earl of *F.* covenanted, and for his heirs, executors and adminiſtrators, to and with the ſaid *A. B.* and *C. D.* their executors and adminiſtrators, to ſuffer a common recovery or recoveries of all the ſaid premiſſes, to and for the ſeveral uſes, intents and purpoſes, and upon the truſts, and under and ſubject to the proviſoes and agreements therein before limited and expreſſed concerning the ſame, with a covenant for further aſſurance, whereby ſuch further aſſurance, and the ſaid recovery thereby covenanted by the ſaid earl to be ſuffered, and all other aſſurances theretofore had, are declared to be to the ſeveral uſes, intents and purpoſes, and upon the truſts, and under and ſubject to the proviſoes and agreements therein before limited and appointed concerning the ſame, as in and by the ſaid indentures of releaſe, relation being thereunto

unto had, may, when the ſame ſhall be produced, more fully appear; and your orators and oratrix further ſhew, that the ſaid intended marriage ſoon after took effect, and the ſaid *G. H.* paid unto the ſaid earl of *F.* —— as the preſent portion of your oratrix the counteſs, and that —— part thereof was applied, by the direction of the ſaid earl, in diſcharge of ſeveral mortgages and incumbrances which affected the ſaid premiſſes, or ſome part thereof; and the ſaid earl of *F.* hath on the back of the ſaid indenture of releaſe indorſed a receipt for the ſaid ——, and thereby expreſſed how the ſame had been applied, to which your orators and oratrix refer, and your orators and oratrix further ſhew unto your Lordſhip, that the ſaid *L.* earl of *F.* being ſeiſed not only of the ſaid manors, lands and hereditaments in the ſaid in part recited indenture of releaſe contained, but likewiſe of divers other manors, lands and hereditaments in tail male, by virtue of a ſettlement made on or about the 30th day of *March* 1687. by *G.* late earl of *F.* deceaſed, great uncle to the now earl, or by ſome other ſettlement of his anceſtors; and the ſaid eſtate-tail then and now exiſting, it became neceſſary for the ſaid *L.* earl of *F.* to ſuffer a common recovery, or to make ſome further and other aſſurance concerning the ſaid premiſſes mentioned in the ſettlement on the marriage of your oratrix, in order the better to ſecure in all events the proviſion thereby intended your oratrix the counteſs, and likewiſe to prevent the truſts and limitations of the ſaid ſettlement upon any future contingency that hereafter may ariſe from being fruſtrated and rendred of no effect; your orators and oratrix therefore hoped that the ſaid *L.* earl of *F.* would have done every thing in his power for the making the ſaid proviſions by the ſaid ſettlement

tlement ſecure to your oratrix in the event of her ſurviving the ſaid earl, and for rendering effectual all the ſaid ſeveral truſts, uſes and limitations of the ſaid deed in all events; and for that purpoſe the ſaid earl hath been frequently applied to by your orators and oratrix: **But now ſo it is**, may it pleaſe your Lordſhip, that the ſaid *L.* earl of *F.* and the honourable *U. P.* of, *&c.* couſin of the ſaid earl of *F.* and eldeſt ſon and heir of *F. P.* Eſq; deceaſed, combining and confederating together, ſet up various pretences to the detriment and injury of your oratrix the now counteſs of *F.* and the ſaid earl of *F.* to prevent the ſecuring in an effectual manner her jointure, and the other proviſions intended by the ſaid ſettlement, ſometimes inſiſt, that the ſaid ſettlement already made as aforeſaid is ſufficient, and all that is in his power to make, and that he has not a legal freehold in him whereby he can be enabled to make a good tenant to the *præcipe* for ſuffering a common recovery, and for that purpoſe the ſaid confederates pretend that the title to the premiſſes ſettled or intended to be ſettled as aforeſaid, is as follows, *to wit*, that the ſaid *G.* late earl of *F.* being ſeiſed in fee of and in divers manors, meſſuages, lands, tenements and hereditaments of a conſiderable yearly value in the counties of *M.* and *N.* did by indentures of leaſe and releaſe, the releaſe bearing date on or about the 30th day of *March* 1687. between the Right Honourable the ſaid *G.* earl of *F.* of the one part, and *J. K.* of, *&c.* and *L. M.* of, *&c.* of the other part, the ſaid earl *G.* in conſideration of a marriage then before had and ſolemnized between the ſaid earl and the counteſs of *F.* his then wife, eldeſt daughter of, *&c.* and for the further and better aſſuring the manors, lands, and hereditaments therein after mentioned to be limited to the

the ſaid Counteſs for her life, and for her jointure, and for ſettling and aſſuring ſeveral of the manors, lands, tenements and hereditaments therein after mentioned to deſcend and come with the Earldom of *F.* unto the heirs male of the body of the ſaid Earl of *F.* and for want of ſuch heirs male, to the honourable *O. P.* brother of the ſaid Earl, and to his ſons and iſſue male ſeverally and ſucceſſively one after another, according as the ſaid ſeveral manors, lands and hereditaments are therein after mentioned to be limited to them; ſo that the ſaid ſeveral manors, lands and hereditaments might be continued together in the family of the ſaid Earl, and for ſettling and conveying other the manors and lands therein mentioned upon ſeveral uſes, intents and purpoſes, he the ſaid Earl *G.* did thereby grant and releaſe unto the ſaid *J. K.* and *L. M.* and to their heirs, all thoſe, *&c.* To hold the ſaid premiſſes, with their and every of their appurtenances, unto the ſaid *J. K.* and *L. M.* their heirs and aſſigns, to the ſeveral uſes, truſts, intents and purpoſes, and under the proviſoes, powers and agreements therein after mentioned, declared and contained, that is to ſay, as for the ſeveral manors of, *&c.* to the uſe of the ſaid Earl *G.* for his life without impeachment of waſte, and from and after his deceaſe, to the uſe of the ſaid *A.* his then Counteſs, for her life for her jointure; and as to and for the ſaid manors and premiſſes after their deceaſe, and alſo as for and concerning all other the manors, meſſuages, farms, lands, tenements and hereditaments of him the ſaid Earl therein before mentioned, to the uſe of the ſaid Earl *G.* and the heirs male of his body; and for default of ſuch iſſue, to the uſe of his brother *O. P.* for and during the term of 99 years, if he ſhould ſo long live, without impeachment of waſte other

than

than for wilful pulling down of houſes, ſtocking up wood, and plowing up meadow grounds, and from and after the determination of the ſaid term of 99 years, to the uſe of the ſaid *J. K.* and *L. M.* and their heirs, for the life of the ſaid *O. P.* to ſupport contingent uſes, and from and after the deceaſe of the ſaid *O. P.* to the uſe of *Q. P.* ſon and heir apparent of the ſaid *O. P.* for and during the term of 99 years, if the ſaid *Q. P.* ſhould ſo long live, without impeachment of waſte, under the reſtrictions aforeſaid; and from and after the determination of the ſaid term of 99 years, to the uſe of the ſaid truſtees and their heirs for the life of the ſaid *Q. P.* to ſupport the contingent uſes; and from and after the deceaſe of the ſaid *Q. P.* to the uſe of the 1ſt, 2d, 3d, and every other the ſon and ſons of the ſaid *Q. P.* ſeverally and ſucceſſively, and of the ſeveral and reſpective heirs male of the body and bodies of all and every ſuch ſon and ſons lawfully iſſuing; and for default of ſuch iſſue, to the uſe of *S. P.* (late father of the now Earl of *F.*) one other of the ſons of the ſaid *O. P.* for and during the term of 99 years, if he ſhould ſo long live, without impeachment of waſte, under the reſtrictions aforeſaid; and from and after the determination of the ſaid term of 99 years, to the uſe of the ſaid truſtees and their heirs, for the life of the ſaid *S. P.* to ſupport the contingent uſes; and from and after the deceaſe of the ſaid *S. P.* to the uſe of his 1ſt, 2d, 3d, and every other the ſon and ſons of the ſaid *S. P.* ſeverally and ſucceſſively, and of the ſeveral and reſpective heirs male of the body and bodies of all and every ſuch ſon and ſons lawfully iſſuing; and for default of ſuch iſſue, to the uſe of all and every other the ſon and ſons of the ſaid *O. P.* in tail male; and for default of ſuch iſſue, to the uſe of the

ſaid

ſaid *G.* Earl of *F.* his heirs and aſſigns for ever, with a power for the ſaid *O. P. Q. P.* and *S. P.* as they ſhould ſeverally be in the actual poſſeſſion of the ſaid premiſſes, to make leaſes not exceeding 21 years at the moſt improved yearly rent, and that it is therein provided, that the ſaid *O. P. Q. P.* and *S. P.* being in the actual poſſeſſion of the premiſſes, ſhould be impowered to make jointures each not exceeding 1000 *l. per ann.* and that it is therein provided that the ſaid Earl *G.* might, during his life, by any deed or deeds, or by his laſt will and teſtament in writing revoke, alter and make void the uſes therein before limited; and it is alledged that the ſaid *G.* Earl of *F.* died in the year 1688, without iſſue male, and without revoking or altering the ſaid ſettlement, or any of the uſes or limitations thereof, but left the ſaid *O. P.* his brother, and the ſaid *A.* his Counteſs Dowager; and that upon his death the ſaid *O.* then Earl of *F.* entered upon the ſaid manors and premiſſes, and was ſeiſed and poſſeſſed thereof according to the uſes and limitations in the ſaid deed of ſettlement in 1687. and had iſſue two ſons, *to wit*, *Q. P.* and *S. P.* (which ſaid *S.* was the father of the now Earl of *F.*) and that the ſaid Earl *O.* departed this life in the year 1709. and that thereupon *Q.* his eldeſt ſon then Earl of *F.* (uncle to the now Earl) entered upon the manors and premiſſes aforeſaid, and was poſſeſſed thereof by virtue of the ſettlement of 1687. for the term of 99 years, if he ſhould ſo long live, and that the ſaid Earl *Q.* departed this life in the year 1718 without iſſue, ſo that the ſaid *S. P.* the ſecond ſon of the ſaid Earl *O.* (and father of the now Earl) ſucceeded to the Earldom, and by virtue of the ſaid ſettlement of 1687 was poſſeſſed of and in the ſaid manors and premiſſes of an eſtate for the term of 99 years, if he ſhould ſo long live,

with

with remainder to his first and every other son in tail male, and that the said Earl *S.* on or about 1733. departed this life, leaving *L.* (the now Earl of *F.*) his only son and child; and it is pretended by the said confederates, that by indenture of bargain and sale bearing date on or about the 31st day of *March* 1715, and afterwards inrolled in the high court of Chancery according to due form of law made between the said *Q.* (then Earl of *F.*) of the first part, *W. E.* Esq; and *E. H.* Gent. of the second part, and *J. W.* Gent. of the third part, the said Earl *Q.* granted, bargained and sold to the said *W. F.* and *E. H.* and their heirs, the several Manors or Lordships of *O. P. Q.* with their appurtenances in the said several counties of *M.* and *N. &c.* To hold the same unto and to the use of the said *W. E.* and *E. H.* and their heirs, to make them tenants of the freehold in a recovery to be suffered, wherein the said Earl *Q.* was to be vouched; and it is thereby declared, that the said recovery when perfected, and the recoveror therein named and his heirs, should stand and be seised of the said manors and premisses therein comprised, and all other persons which then after should be seised thereof by virtue of the same recovery, should stand and be seised thereof to the use of such person and persons, for such estate and estates, and in such manner and for such uses and purposes, and upon such trusts, conditions or limitations, as the said Earl *Q.* by any writing or writings under his hand and seal testified by two or more witnesses, should direct, limit or appoint; and it is insisted by the said confederates, that in *Easter* term in the first year of the reign of his Majesty King *George* I. a common recovery was accordingly suffered of the said manors and premisses; and it is further insisted by the said confederates, that by indentures of lease and release, bearing

date on the 30th and 31ſt days of *March* 1715, the releaſe being quadripartite, and made between the ſaid Earl *Q.* of the firſt part, the ſaid *W. E.* and *E. H.* of the ſecond part, the ſaid *J. W.* of the third part, and *T. E.* and *J. E.* of the fourth part, It is thereby witneſſed, that in order to ſettle the ſaid manors and premiſſes before mentioned in the name and blood of the ſaid Earl *Q.* and as and for a declaration of the uſes of the common recovery agreed to be ſuffered by the ſaid indenture tripartite, as of all other aſſurances at any time then and after to be had, of all or any of the ſaid manors and premiſſes, it is by the ſaid indenture declared and agreed between the parties thereto, and the ſaid Earl *Q.* thereby directed, limited and appointed, that the ſaid common recovery ſo agreed and intended to be ſuffered, and all other aſſurances whatſoever of the premiſſes to be had, ſhould be and enure, and ſhould be deemed and taken to be and enure, and the ſaid *J. W.* the recoveror in the ſaid recovery, and his heirs, and all other perſon or perſons which then after ſhould be or ſtand ſeiſed of the ſame premiſſes by virtue of the ſaid recovery, or any other or further aſſurances which ſhould be made of the ſame manors and premiſſes, ſhould ſo ſtand and be ſeiſed of the ſame premiſſes to the uſes following, that is to ſay, to the uſe of the ſaid Earl *Q.* and the heirs male of his body, remainder to the uſe of the Honourable *S. P.* uncle of the ſaid Earl (and father of the now Earl) for 99 years, if he ſhould ſo long live, without impeachment of waſte, remainder to the uſe of the ſaid *T. E.* and *J. E.* and their heirs during his life, to preſerve contingent uſes, remainder to the uſe of the ſaid *L. P.* (the now Earl) ſon and heir apparent of the ſaid *S. P.* for 99 years, if he ſhould ſo long live, without impeachment of waſte, other than for wilful

wilful pulling down of houſes, ſtocking up woods, or ploughing up meadow grounds; remainder to the ſame truſtees during his life, to preſerve contingent uſes, remainder to the firſt and other ſons of the ſaid *L. P.* the now Earl, ſucceſſively in tail male; remainder to the uſe of all other the ſons of the ſaid *S. P.* ſucceſſively in tail male, remainder to the uſe of the Honourable *F. P.* and the heirs male of his body, remainder to the uſe of the ſaid Earl *Q.* and his heirs; and it is thereby further declared, that it ſhould be lawful to and for the ſaid *S. P.* and *L. P.* (the now Earl) as they ſhould reſpectively be in poſſeſſion of the ſaid manors and premiſſes, to grant, limit or appoint any of the premiſſes to any wife or wives, which either of them ſhould then after marry, for life for their jointure, not exceeding in the whole 1000*l. per annum*, and that it ſhould be lawful for the ſaid Earl *Q.* at any time during his life, by any deed or deeds, writing or writings by him executed in the preſence of three or more witneſſes, to revoke the uſes before limited or declared, and by the ſame or any other deed ſo executed, to limit new uſes touching the ſaid premiſſes, or any part thereof, as he ſhould think fit; and it is alledged by the ſaid confederates, that the ſaid Earl *Q.* in the year 1718, departed this life without iſſue, and without revoking any of the uſes in the laſt mentioned deed, and that thereupon the Earldom devolved upon the ſaid *S. P.* (father of the now Earl) and the ſaid *L.* Earl of *F.* and the ſaid *U. P.* do inſiſt, that by the ſaid recovery the limitations in tail under the ſettlement of 1687 were barred and extinguiſhed; but your orators and oratrix are adviſed and inſiſt, that ſuch recovery is a void recovery for want of a good tenant to the precipe, inaſmuch as the ſaid *Q.* Earl of *F.* was, at the time of executing the

ſaid deed and ſuffering the ſaid common recovery, only tenant for 99 years under the ſaid ſettlement of 1687, or of ſome other ſettlement or aſſurance of the anceſtors of the ſaid Earl, and that the freehold was then ſtanding out in the truſtees named in the ſettlement of 1687, or in ſome other truſtees who did not join in ſuch recovery, and therefore that notwithſtanding ſuch deeds and recovery might be executed and ſuffered, yet as the ſaid *Q.* Earl of *F.* is now dead without iſſue, the title and eſtate hath of right devolved upon the preſent Earl, who by virtue of the ſettlement of 1687 is (as your orators and oratrix are adviſed) tenant in tail in poſſeſſion of the premiſſes aforeſaid; but by ſuch means and pretences of the ſaid confederates, the ſecuring in an effectual manner the proviſions intended your oratrix by the ſaid ſettlement is to her great prejudice delayed, and in caſe the ſaid *L.* (the now Earl) ſhould die before your oratrix without making ſome further aſſurance, the ſaid ſettled eſtate may, by virtue of ſome former ſettlement, go over to the ſaid *U. P.* or ſome other remote remainder man, in which event your oratrix may, in ſome meaſure, be defeated of the proviſion intended her by the ſaid ſettlement; though at other times it is admitted by the ſaid *L.* Earl of *F.* and *U. P.* that the ſaid common recovery is in itſelf void, and hath no operation in law; and your oratrix humbly inſiſts, that the ſaid ſettlement made upon her marriage, and the truſts thereof, ought to be executed and performed in the moſt beneficial manner, in order to anſwer the ends and intents thereof; and the rather, as your oratrix, and her father *G. H.* lately deceaſed, had no notice of the ſaid ſettlement and pretended aſſurances of the anceſtors of the preſent Earl now ſet up and pretended to be in force: But your oratrix and her father, and the truſtees,

were

were aſſured and did imagine, that the ſaid Earl was ſeiſed of an eſtate in tail of the ſaid premiſſes mentioned in her marriage ſettlement, or of ſome other eſtate of inheritance, whereby he might have been inabled to have ſuffered a common recovery, or of making other aſſurances for the aſſuring and effectually ſecuring the proviſions intended your oratrix by the ſaid ſettlement in caſe your oratrix ſhould ſurvive the preſent Earl, and all other proviſions intended by the ſaid ſettlement; and under the confidence that the ſaid Earl was ſo ſeiſed, the ſaid *G. H.* her father, not only paid to the ſaid Earl, or to his order, and by his direction, the ſaid ſum of——as her marriage portion, but likewiſe agreed to give and advance unto the ſaid Earl the further ſum of———upon the death of him and *S.* his wife, and by indentures of demiſe and grant of ſeveral manors, *&c.* for a term of years thereby created, hath ſecured the ſame to be ſo paid; and your oratrix hopes that in caſe it ſhould be determined by this honourable court, that the ſaid *L.* now Earl of *F.* is intitled to only an eſtate for years or life, in the manors, lands and tenements in your oratrix's ſaid marriage ſettlement contained, or any of them, then that he may be obliged out of other his manors, lands and hereditaments, effectually to ſecure unto your oratrix the ſaid rent-charge of 1600*l.* a year intended as a jointure and proviſion for your oratrix by the ſaid marriage ſettlement in caſe your oratrix ſhould ſurvive the ſaid Earl, and likewiſe to make good and ſecure to your oratrix the other proviſions made or intended for her by the ſaid ſettlement, or at leaſt ſuch part of the ſaid rent-charge and jointure, as the powers by any of the family ſettlements of making jointures ſhall fall ſhort to anſwer and make good; And the ſaid *U. P.* claims ſome right or title to the ſaid pre-

miſſes, and inſiſts your oratrix's ſaid ſettlement ought not to be carried into execution, but refuſes to diſcover what right he claims, or how he claims the ſame, and what reaſons he has againſt your oratrix's ſaid ſettlement being carried into execution. **In tender conſideration** whereof, and foraſmuch as your orators and oratrix are intirely remedileſs in the premiſſes according to the ſtrict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; **To the end therefore,** that the ſaid *L.* Earl of *F.* and *U. P.* may true and perfect anſwer make to all and ſingular the ſeveral matters and things herein before ſet forth, and that in as full and ample manner as if the ſame were here repeated, and they were interrogated thereto, and more eſpecially that they may ſet forth and diſcover whether ſuch ſettlement of the 10th day of *May* 1735, or of ſome other date, and when, was not, on or before the intermarriage of the ſaid Earl *L.* with your oratrix, made and entred into by the ſaid *L.* Earl of *F.* and whether the ſame is not to the purport and effect as herein before is ſet forth, or to what other purport and effect, and whether the marriage portion of your oratrix did not amount to the ſum as herein before is mentioned, and whether ———, part thereof, was not accordingly paid to and received by the ſaid Earl *L.* or whether the ſame or part thereof was not paid and applied according to the order and direction of the ſaid Earl *L.* and whether the further ſum of ———, reſidue of your oratrix's portion, be not ſecured to be paid at the death of the ſaid *G. H.* and his ſaid wife; and that the ſaid Earl *L.* may ſet forth, whether ſuch ſettlement bearing date on or about the 30th day of *March* 1687, or of ſome other and what date, and to the purport

and effect aforeſaid, or to ſome other and what purport and effect, was not executed by the ſaid Earl *G.* (great uncle of the now Earl) and that he may produce the ſaid deed, and may ſet forth the ſubſtance of all and every the deed and deeds herein before mentioned, and likewiſe all other deeds and writings in his cuſtody or power relating to the ſaid premiſſes or to his eſtate and intereſt therein, and that he may produce the ſaid ſeveral deeds and ſettlement before this honourable court, and that the ſaid *U. P.* may ſet forth, whether he is not the eldeſt ſon and heir of *F. P.* named in the ſaid indenture of the 31ſt of *March* 1715. and whether the ſaid *F. P.* is not dead, and how long ſince, and whether he claims any eſtate in remainder or otherwiſe, and under what title, in any and which of the premiſſes in your oratrix's ſaid marriage ſettlement contained, and why he objects to your oratrix's ſaid ſettlement being effectually carried into execution, and that the ſaid *L.* Earl of *F.* may ſpecifically perform his covenant in the ſaid marriage ſettlement, and be obliged to ſuffer one or more recovery or recoveries, or make ſome further and other aſſurance, of and in reſpect of the premiſſes contained in the ſettlement on the marriage of your oratrix, as this honourable court ſhall think fit, in order more effectually to ſecure in all events the ſaid proviſions made your oratrix by the ſaid ſettlement, and that all proper parties may join in ſuffering a compleat recovery or recoveries, and in all ſuch further and other acts and aſſurances in the law, as are neceſſary for ſubſtantiating the ſaid ſettlement, and for carrying the ſame into a perfect and effectual execution; and that your orators and oratrix may have ſuch further and other relief touching the premiſſes as ſhall be agreeable to juſtice and the nature of their caſe:

May it therefore pleaſe your Lordſhip to grant unto your orators and oratrix your Lordſhip's letter miſſive directed to the ſaid *L.* Earl of *F.* deſiring him to appear to, and anſwer your orator's ſaid bill, or in default thereof, his Majeſty's moſt gracious writ or writs of *ſubpœna* directed to him the ſaid *L.* Earl of *F.* and alſo to the ſaid *U. P.* thereby commanding them, and every of them, at a certain day and under a certain pain therein to be limited, perſonally to be and appear before your Lordſhip in this honourable court, and then and there particular anſwer make to all and ſingular the premiſſes, and to ſtand to and abide ſuch further order and decree in the premiſſes as to your Lordſhip ſhall ſeem meet. And your orators and oratrix ſhall ever pray, *&c.*

A bill for an account of the rents and profits of mortgaged premiſſes, and for a redemption, &c.

HUMBLY complaining, ſheweth unto your Lordſhip, your orator *M. B.* of —— in the county of ——, Eſq; that *J. B.* late of ——, otherwiſe —— in the ſaid county of —— deceaſed, being ſeiſed and poſſeſſed of, and well intitled in fee-ſimple, or ſome other good eſtate of inheritance of, in and to a meſſuage, farm and lands in —— aforeſaid, and in ——, —— and —— in the ſaid county, or in ſome or one of them, or in ſome adjacent town or towns, of the yearly value of ſixty pounds and upwards, part whereof was and is freehold, and other part thereof copyhold eſtate of inheritance, and holden of the Lords of the ſeveral manors of ——, late ——————, otherwiſe ———— with ——, and —— with ——; and being ſo ſeiſed and

and poſſeſſed, by indenture bearing date on or about the 25th day of *March* 1698, made or mentioned to be made between the ſaid *J. B.* of the one part, and *J. K.* of —— in the ſaid county of —— ſince deceaſed, of the other part, in conſideration of the ſum of ſixty pounds paid by the ſaid *J. K.* to the ſaid *J. B.* he the ſaid *J. B.* did grant, bargain, ſell, *&c.* unto the ſaid *J. K.* his executors, adminiſtrators and aſſigns, all ——, part of the ſaid eſtate, to hold ſo much thereof as was and is freehold, for the term of five hundred years, to commence from the date of the ſaid indenture, and to hold ſo much of the ſaid premiſſes as is copyhold at the will of the Lord or Lords of the reſpective manors whereof the ſame are holden according to the cuſtom of ſuch manors reſpectively, in which ſaid indenture is contained a proviſo or condition for making void the ſame on payment of the ſums of one pound and ſixteen ſhillings and ſixty-one pounds and ſixteen ſhillings, by the ſaid *J. B.* his heirs, executors or adminiſtrators, unto the ſaid *J. K.* his executors, adminiſtrators and aſſigns, at the ſeveral times therein mentioned, and now long ſince paſt; and your orator further ſheweth, that by indenture tripartite bearing date on or about the twenty-ninth day of *December* 1705, made or mentioned to be made between the ſaid *J. K.* of the firſt part, the ſaid *J. B.* of the ſecond part, and *W. C.* and *R. W.* of the third part, after reciting that the ſaid *J. B.* did then ſtand indebted unto the ſaid *J. K.* in the ſum of two hundred pounds for principal and intereſt on the aforeſaid mortgage, and for ſeveral other ſums of money at divers times advanced and lent by the ſaid *J. K.* to the ſaid *J. B.* he the ſaid *J. K.* in conſideration of the ſaid ſum of two hundred pounds paid to him by the ſaid *W. C.*

C. and *R. W.* did, by and with the direction and conſent of the ſaid *J. B.* aſſign the ſaid mortgaged premiſſes unto them the ſaid *W. C.* and *R. W.* to hold to them, their executors, adminiſtrators and aſſigns, for the then reſidue of the ſaid term of 500 years, and the ſaid *J. B.* did ratify and confirm the ſaid premiſſes to them the ſaid *C.* and *W.* their executors, adminiſtrators and aſſigns, for the reſidue of the ſaid term of 500 years; and for the better ſecuring the repayment of the ſaid ſum of two hundred pounds and intereſt, the ſaid *J. B.* did by the ſame indenture grant, bargain and ſell unto the ſaid *C.* and *W.* all his the ſaid *B.*'s freehold meſſuages, lands, tenements and hereditaments in —— and —— aforeſaid, not before aſſign'd by the ſame indenture; To hold to them the ſaid *C.* and *W.* their executors, adminiſtrators and aſſigns, for the term of five hundred years, to commence from the date of the ſaid laſt mentioned indenture, ſubject to a proviſo and covenant therein contained, that upon payment of the ſum of two hundred and ten pounds in manner therein mentioned, by the ſaid *J. B.* his heirs, executors or adminiſtrators, unto the ſaid *W. C.* and *R. W.* their executors, adminiſtrators or aſſigns, they the ſaid *W. C.* and *R. W.* their executors, adminiſtrators and aſſigns, ſhould, at the coſts of the ſaid *J. B.* his heirs or aſſigns, re-convey the ſaid mortgaged premiſſes unto the ſaid *J. B.* his heirs or aſſigns, or as he or they ſhould appoint, free from all incumbrances done by them the ſaid *C.* and *W.* or either of them; and the ſaid *J. B.* did about the time of the date of the ſaid laſt mentioned indenture, ſurrender all his copyhold lands and tenements held of the ſeveral manors aforeſaid, to the uſe of them the ſaid *W. C.* and *R. W.* and their heirs, as a further ſecurity for the payment of the ſaid ſum of two hundred and ten pounds, and to be void on

payment

payment thereof in manner aforeſaid; And your orator further ſheweth, that ſoon after the execution of the ſaid laſt mentioned indenture, he the ſaid *J. B.* being of ſound and diſpoſing mind, memory and underſtanding, did duly make and publiſh his laſt will and teſtament in writing, bearing date on or about the eighth day of *February* one thouſand ſeven hundred and five, which will was by him duly executed in the preſence of three credible witneſſes according to the ſtatute in that caſe made and provided, and thereby the ſaid teſtator did deviſe all the ſaid mortgaged premiſſes to *E.* his wife for her life, and after her deceaſe to his ſon *R. B.* and his heirs lawfully to be begotten; and the ſaid teſtator *J. B.* died ſoon after the making of his ſaid will, without altering or revoking the ſame; and your orator further ſheweth, that after the death of the ſaid *J. B.* by indenture bearing date on or about the firſt day of *April* one thouſand ſeven hundred and twelve, between the ſaid *E. B.* and the ſaid *R. B.* of the one part, and the ſaid *R. W.* of the other part, the ſaid *W. C.* being then dead, after reciting amongſt other things, that they the ſaid *E.* and *R. B.* had then borrowed of the ſaid *W.* the further ſum of ſixty pounds, they the ſaid *E.* and *R. B.* thereby agreed that the ſaid freehold and copyhold premiſſes ſhould ſtand charged not only with the ſaid ſum of two hundred pounds and the intereſt thereof, but alſo with the ſaid ſum of ſixty pounds and intereſt for the ſame, after the rate of five pounds for one hundred pounds for a year from the time of the date of the ſaid laſt mentioned indenture; and your orator further ſheweth, that afterwards, in or about the month of *November* 1714. the ſaid *R. B.* died inteſtate without leaving any iſſue of his body, whereupon all his eſtate, right, intereſt

and

and equity of redemption of, in and to the ſaid mortgaged premiſſes, deſcended and came to *A.* the wife of one *R. T.* ſhe being the only ſiſter and heir at law of her ſaid deceaſed brother *R. B.* and alſo only ſurviving daughter and heir at law of the ſaid teſtator *J. B.* and your orator further ſheweth, that ſoon after the death of the ſaid *R. B.* by indenture bearing date on or about the firſt day of *January* 1714. made between *E. D.* widow (late the widow and relict of the ſaid teſtator *J. B.*) and the ſaid *R. T.* and *A.* his wife of the one part, and the ſaid *R. W.* of the other part, after reciting that they the ſaid *E. D.* and *R. T.* and *A.* his wife, then ſtood indebted to the ſaid *R. W.* in the ſaid principal ſums of two hundred pounds and ſixty pounds herein before mentioned, upon the ſeveral ſecurities aforeſaid, and that they had then borrowed of him the further ſum of one hundred and forty pounds, it was thereby agreed, that all the aforeſaid mortgaged premiſſes, as well freehold as copyhold, ſhould ſtand and be a ſecurity, not only for the ſaid principal ſum of two hundred and ſixty pounds, but alſo for the ſaid ſum of one hundred and forty pounds, amounting together to the ſum of four hundred pounds, and the intereſt thereof from the date of the ſaid laſt mentioned indenture; and your orator further ſheweth, that by indenture quadripartite bearing date on or about the twenty-ſixth day of *March* 1719, made or mentioned to be made between *H. W.* widow and adminiſtratrix of the before-named *R. W.* of the firſt part, *E. B.* of the ſecond part, the ſaid *E. D. R. T.* and *A.* his wife of the third part, and *D. D.* gent. ſince deceaſed, of the fourth part, reciting, that all intereſt of the ſaid four hundred pounds was paid to the day of the date of the ſaid laſt mentioned indenture, and that

two

two hundred pounds, part of the ſaid principal ſum of four hundred pounds, was the proper money of the ſaid *E. B.* and that the remaining two hundred pounds was the proper money of the ſaid *H. W.* as the adminiſtratrix of her ſaid late huſband, who died inteſtate, and reciting that the ſaid *R. T.* had occaſion for the further ſum of eighty pounds, the ſaid laſt mentioned indenture witneſſed, that in conſideration of the ſaid ſum of two hundred pounds paid to the ſaid *E. B.* and of the ſaid ſum of two hundred pounds paid to the ſaid *H. W.* and alſo in conſideration of the ſaid ſum of eighty pounds paid to the ſaid *E. D.* and *R. T.* by the ſaid *D. D.* ſhe the ſaid *H. W.* by and with the conſent and direction of the ſaid *E. B. E. D. R. T.* and *A.* his wife, did aſſign all the ſaid mortgaged premiſſes to the ſaid *D. D.* To hold the ſaid freehold premiſſes to him, his executors, adminiſtrators and aſſigns, for the reſidue of the ſaid terms of five hundred years and five hundred years herein before mentioned; and the ſaid *E. D. R. T.* and *A.* his wife thereby ratified and confirmed the ſaid aſſignment, and alſo bargained and ſold the ſaid copyhold premiſſes to the ſaid *D. D.* his heirs and aſſigns, ſubject to the proviſo contained in the ſaid indenture for making the ſame void, as to the ſaid copyhold premiſſes, and for re-conveying and re-aſſigning the ſaid freehold premiſſes upon payment of the ſum of five hundred and four pounds, as therein is mentioned, that is to ſay, the ſum of twelve pounds, part of the ſaid five hundred and four pounds, upon the twenty-ſeventh day of *March* in the year of our Lord 1720. and ſoon after the execution of the ſaid laſt mentioned indenture, the ſaid *E. D.* and the ſaid *R. T.* and *A.* his wife, did in due form of law ſurrender all and ſingular the ſaid copyhold premiſſes held of the

the ſeveral manors aforeſaid, into the hands of the reſpective Lords of the ſaid manors, to the uſe of the ſaid *D. D.* and his heirs, under a condition for redemption of the ſaid copyhold premiſſes on payment of the ſaid five hundred and four pounds in manner aforeſaid, and ſatisfaction was thereupon entered on the former ſurrenders and other inſtruments herein before mentioned, now in the cuſtody or power of the defendant herein after named, as, had your orator the ſame to produce, would more fully and at large appear; And your orator further ſheweth unto your Lordſhip, that in or about the year of our Lord 1726. the ſaid *A.* the wife of the ſaid *R. T.* died without having made any diſpoſition of her ſaid equity of redemption, of and in the ſaid mortgaged premiſſes, by means whereof the ſame deſcended and came to her two daughters and coheirs *A.* and *S. T.* who were then infants under the age of twenty-one years, that is to ſay, the ſaid *A.* was then about ten years of age, and the ſaid *S.* about nine years of age, and from and after the death of the ſaid *A. T.* the mother, the ſaid *R. T.* the father of the ſaid *A.* and *S. T.* the infants, continued in poſſeſſion of the ſaid mortgaged premiſſes until about the year of our Lord 1730. and during all that time paid all intereſt due to the ſaid *D. D.* on his ſaid mortgage; and your orator further ſheweth, that *E. A.* of ——— aforeſaid, Eſq; being deſirous to get the ſaid mortgaged premiſſes into his own poſſeſſion, and to become the purchaſer of the inheritance and equity of redemption thereof; and apprehending, that if the debt charged on the ſaid premiſſes was increaſed, the ſaid *R. T.* and his children would be obliged to ſell the ſame, he the ſaid *E. A.* did with that view and for that purpoſe, apply to the ſaid *D.* about the latter end of the year 1729. and did

prevail

prevail on the ſaid *D.* to get himſelf admitted tenant of the ſaid copyhold eſtates held as aforeſaid of the Lords of the ſaid four ſeveral manors (the fines of three of which ſaid manors were arbitrary;) and after ſuch admiſſions the ſaid *A.* further prevailed on the ſaid *D.* to ſurrender all the ſaid copyhold premiſſes unto him the ſaid *A.* although the ſaid *D.* before ſuch application of the ſaid *A.* was very well contented with his ſaid ſecurity without putting the mortgaged eſtate to the charge or expence of ſuch admiſſions; and the ſaid *A.* as ſoon as the ſaid copyhold premiſſes were ſurrendered to him by the ſaid *D.* as aforeſaid, procured himſelf to be admitted tenant thereto, by means whereof two fines became due, and were paid to each of the Lords of the ſaid four ſeveral manors, on the ſaid ſeveral and reſpective admiſſions of the ſaid *A.* and *D.* and double fees were alſo paid to the ſtewards of the ſaid four ſeveral manors, amounting together to the ſum of ſeventy pounds and upwards, which the ſaid *E. A.* now inſiſts the ſaid mortgaged premiſſes ought to be charged with; and your orator further ſheweth, that the ſaid *E. A.* did about the ſame time prevail on the ſaid *D.* to aſſign the ſaid freehold premiſſes (ſo mortgaged to him the ſaid *D.* as aforeſaid) unto him the ſaid *A.* but by what deed, of what date, or for what conſideration ſuch aſſignment was made, the ſaid *A.* refuſes to diſcover, and the ſaid *E. A.* hath ever ſince *Lady-Day* 1730, been in poſſeſſion of all the ſaid mortgaged premiſſes, and received the rents and profits thereof, and applied the ſame to his own uſe; and your orator further ſheweth, that the ſaid *R. T.* died on or about the —— day of ——, after whoſe death *A. T.* the elder daughter of the ſaid *R. T.* by the ſaid *A.* his wife, intermarried with *R. P.* and attained her age of twenty-one years on or about

about the fifteenth day of *April* 1737. and the ſaid *S. T.* the younger daughter of the ſaid *R. T.* by the ſaid *A.* his wife, did alſo attain her age of twenty-one years on or about the 10th day of *April* 1738. and your orator having agreed with the ſaid *R. P.* and his wife for the abſolute purchaſe of their moiety of the inheritance and equity of redemption of all the ſaid mortgaged premiſſes, both freehold and copyhold, for the ſum of one hundred pounds, they the ſaid *R. P.* and his wife, by indentures of leaſe and releaſe, the leaſe bearing date the twenty-ſecond, and the releaſe the twenty-third day of *July* 1737. in conſideration of the ſum of one hundred pounds to them paid by your orator, did grant and releaſe unto your orator and his heirs, All that their moiety or half part of and in all and ſingular the ſaid premiſſes compriſed in the aforeſaid mortgages, or in any of them, and all the right, title, intereſt and equity of redemption of them the ſaid *R. P.* and *A.* his wife, or either of them, of, in and to the ſame premiſſes, or any part thereof; To hold unto your orator, his heirs and aſſigns, to the uſe of your orator, his heirs and aſſigns for ever; and purſuant to a covenant in the ſaid indenture of releaſe contained, the ſaid *R. P.* and *A.* his wife, joined in levying a fine of the ſaid premiſſes to the uſe of your orator, his heirs and aſſigns for ever; And your orator having alſo agreed with the ſaid *S. T.* for the abſolute purchaſe of her moiety of the inheritance and equity of redemption of all the ſaid mortgaged premiſſes both freehold and copyhold, for the like ſum of one hundred pounds, ſhe the ſaid *S. T.* by indenture of leaſe and releaſe, the leaſe bearing date the eleventh, and the releaſe the twelfth day of *April* 1738. In conſideration of the ſum of one hundred pounds to her paid by your orator, did grant and

and releaſe to your orator and his heirs, All that her the ſaid *S.*'s moiety or half-part, of and in the ſame premiſſes, and all her right, title, intereſt and equity of redemption of, in and to the ſame, and every part thereof; To hold unto your orator, his heirs and aſſigns, to the uſe of your orator, his heirs and aſſigns for ever, and the ſaid *R. P.* and *A.* his wife, and the ſaid *S. T.* for the ſeveral conſiderations aforeſaid, have ſeverally ſurrendered all the ſaid copyhold premiſſes herein before mentioned, into the hands of the reſpective Lords of the ſaid four ſeveral manors, whereof the ſame are holden to the uſe of your orator, his heirs and aſſigns for ever, according to the cuſtom of the ſaid manors reſpectively, as by the ſaid ſeveral indentures of leaſe and releaſe, and ſurrenders, it doth and may appear; and your orator further ſheweth, that he hath cauſed his ſaid purchaſe-deeds to be produced and ſhewn to the ſaid *E. A.* to be by him inſpected and peruſed, that he might ſatisfy himſelf in reſpect to your orator's title to the equity of redemption of the ſaid mortgaged premiſſes; and the ſaid *E. A.* accordingly inſpected and peruſed the ſame, and ſeemed to be ſatisfied with your orator's title to the equity of redemption of the ſaid mortgaged premiſſes; and your orator hath divers times ſince his ſaid purchaſe, by himſelf and agents, applied to the ſaid *E. A.* and in a fair and friendly manner deſired him to produce and ſhew to your orator or his agents, the deeds and ſecurities whereby he claims to have any charge or incumbrance on the ſaid mortgaged premiſſes, that your orator might know what, and how much principal money the ſaid premiſſes do now ſtand lawfully charged with, and liable to; and your orator hath alſo requeſted of the ſaid *E. A.* that he would come to a juſt and fair account with your orator touching the rents

and profits of the ſaid mortgaged premiſſes, received by him, or any other perſon or perſons for his uſe, or which without his wilful default he might have received, and alſo touching what is due to him the ſaid *E. A.* for principal and intereſt on the aforeſaid mortgages, and your orator hath offered, and doth hereby offer to pay unto the ſaid *E. A.* what upon a fair account ſhall appear to be juſtly due unto him, and lawfully charged on the ſaid premiſſes by virtue of the ſaid mortgages, immediately after ſettling the ſaid account, or at the end of three or ſix months then next following, as ſhould be moſt agreeable to the ſaid *E. A.* And your orator hath alſo offered, that if any difficulty ſhould ariſe in ſettling the ſaid account, the ſame ſhould be referred to two indifferent perſons to be choſen by the ſaid *A.* and your orator, and that if any queſtion of law ſhould ariſe, the ſame ſhould be determined by the opinion of ſome counſel to be agreed on between them, and your orator had reaſon to hope that the ſaid *E. A.* would have complied with your orator's ſaid juſt and reaſonable offers and requeſts: **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *E. A.* ſometimes pretends that he hath an abſolute eſtate in law in the ſaid mortgaged premiſſes, and that he did, ſo long ago as the year of our Lord 1730. purchaſe the equity of redemption of the ſaid mortgaged premiſſes of the ſaid *R. T.* and that the ſaid *R. T.* did, by ſome indenture or articles of agreement under his hand and ſeal, covenant and agree, that the ſaid *R. T.* and his two daughters herein before named, ſhould and would, when and as ſoon as his ſaid daughters ſhould reſpectively attain the age of twenty-one years, releaſe and convey the equity of redemption of the ſaid mortgaged premiſſes unto him the ſaid *E. A.* in conſideration of a certain ſum of money pretended

tended to be paid to the ſaid *R. T.* and his ſaid two daughters, or ſome or one of them; whereas your orator chargeth, that if any ſuch deeds or articles was or were executed by the ſaid *R. T.* as aforeſaid (which your orator doth not admit,) yet the ſaid *E. A.* never paid any conſideration for the ſame; and in regard the ſaid *A.* and *S. T.* the daughters of the ſaid *R. T.* were then infants under the age of twenty-one years, your orator is adviſed, and humbly inſiſts, that they were not in any ſort bound thereby, but that the equity of redemption of the ſaid freehold and copyhold premiſſes, being ſo conveyed and ſurrendered to your orator as aforeſaid, he ought to ſtand in the place of the ſaid *A.* and *S.* the daughters of the ſaid *R. T.* and *A.* his wife, and ought to be let into a redemption of all the ſaid mortgaged premiſſes upon payment of what ſhall appear to be juſtly due to the ſaid *E. A.* by and under the aforeſaid indenture of mortgage of the twenty-ſixth day of *March* 1719. and at other times the ſaid *E. A.* pretends that the ſaid *R. T.* borrowed ſeveral other ſums of money of the ſaid *D.* and of him the ſaid *E. A.* over and beſides the ſaid ſum of four hundred and eighty pounds, to the amount in the whole of the ſum of ſeven hundred pounds principal money, or ſome other conſiderable ſum, and that the ſame now ſtands charged on the ſaid mortgaged premiſſes by virtue of ſome deed or deeds, writing or writings entered into and executed by the ſaid *R. T.* whereby he hath covenanted and agreed with the ſaid *D.* and *E. A.* or one of them, to charge the ſaid mortgaged premiſſes with the ſaid ſum of ſeven hundred pounds, or ſome other conſiderable ſum of money; but the date, purport and contents of ſuch deeds or writings, or for what conſideration the ſame was or were made, the ſaid *E. A.* altogether refuſes to

diſcover, and hath refuſed or declined to produce the ſame to your orator or his agents, and hath pretended that he was adviſed it was improper for him to produce the ſame, ſo that your orator cannot certainly know what ſum of principal money is really charged on the ſaid mortgaged premiſſes; and your orator expreſsly charges, and ſo the truth really is, that no fine was ever levied by the ſaid *A.* the wife of the ſaid *R. T.* nor any ſurrender made by her, ſave only for the charging the ſaid premiſſes with the ſaid ſum of four hundred and eighty pounds and intereſt, in manner aforeſaid; and your orator is adviſed, and humbly inſiſts, that the ſaid mortgaged premiſſes, being the inheritance of the ſaid *A.* the wife of the ſaid *R. T.* the ſame could not in law be made ſubject to the covenant of the ſaid *R. T.* nor to any agreement entered into by the ſaid *R. T.* and *A.* his wife during her coverture, if any ſuch there be (which your orator doth not admit;) nor ought the ſaid *A.* the wife of the ſaid *R. T.* or her iſſue, or your orator who claims under them, to be bound by ſuch covenant or agreement, nor ought their eſtate or intereſt in the premiſſes to be in any ſort affected thereby; but your orator ought to be let into a redemption of all the ſaid mortgaged premiſſes, both freehold and copyhold, on payment of the aforeſaid principal ſum of four hundred and eighty pounds, and intereſt, without any regard to any covenant or agreement entered into by the ſaid *R. T.* alone, or by him and the ſaid *A.* his wife during her coverture; and the ſaid *E. A.* being the Lord of the manor of —— with ——, hath taken the court-books relating to the ſaid manor from his ſteward, and keeps the ſame in his own cuſtody, and abſolutely refuſes to admit your orator to that part of the ſaid copyhold premiſſes which is holden of his ſaid manor, and

which

which has been surrendered unto your orator as aforesaid; and the said *E. A.* doth also refuse to discover unto your orator, what sums of money have been received by him, or by any other person or persons by his order, or for his use, or which without his wilful default might have been received by and out of the rents and profits of the said mortgaged premisses; and the said *E. A.* hath plowed up the land-marks in order to prevent your orator from discovering the true boundaries of the said mortgaged premisses, and hath laid out great sums of money in and about the fences and inclosures of the said premisses, in an unnecessary and unprofitable manner, and with design to increase the debt on the said estate, and to prevent your orator from seeking a redemption thereof; All which actings, doings and pretences of the said *E. A.* are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. **In tender consideration** whereof, and for that your orator is utterly remediless, by the strict rules of the common law, and cannot have a discovery of the truth of the several matters aforesaid, but by the corporal oath of the said *E. A.* nor can your orator be let into redemption, or have an account of the rents and profits of the said mortgaged premisses, without the aid and assistance of a court of equity before your Lordship, where matters of this nature are properly cognizable and relievable; **To the end therefore** that the said *E. A.* may, upon his corporal oath, full, true, distinct and perfect answer make, to all and singular the matters and things, herein before set forth, as fully and particularly as if the same were here again repeated and interrogated; and more especially, that he may set forth and discover, whether he doth not know or believe, that the said *J. B.* was seised and possessed of such

freehold and copyhold premiſſes, of ſuch yearly values as herein before mentioned, or any other; and what freehold and copyhold eſtate or eſtates, where ſituate, in whoſe tenure or occupation, and at, and under what yearly rent; and of what manor or manors the ſaid copyhold premiſſes are holden; and whether the ſaid *J. B.* did not make ſuch mortgages of the ſaid premiſſes as aforeſaid, or what other mortgages, by any and what deeds or ſurrenders, of what date, and to what purport or effect, and for what conſideration really and truly paid, as he the ſaid *E. A.* knows, has heard or believes; and whether the ſaid *J. B.* did not make and duly publiſh ſuch laſt will and teſtament, of ſuch date and purport as aforeſaid, or to what other purport or effect; and whether the ſame was duly executed, and before whom, as he knows, believes, or has been informed; and whether the ſaid *J. B.* did not die ſoon after making his ſaid will, or at any other, and what time; and whether the ſaid *E. B.* the widow of the ſaid *J. B.* and the ſaid *R. B.* the ſon and heir of the ſaid *J. B.* deviſees by and under the will of the ſaid *J. B.* did not make ſuch mortgage as before mentioned, or any other, and what mortgage of the ſaid freehold and copyhold premiſſes, and by what deeds, ſurrenders, or other inſtruments, and when dated and executed, and for what conſideration really and truly paid, and whether he doth not know or believe, that the ſaid *R. B.* died inteſtate, and without iſſue of his body at the time aforeſaid, or at any other, and what time, and whether his eſtate and intereſt in the ſaid premiſſes, did not, as he believes, or has been informed, deſcend and come unto *A.* the wife of the ſaid *R. T.* as only ſiſter and heir at law of the ſaid *R. B.* and only daughter and heir at law of the ſaid teſtator *J. B.* and whether

whether *E. B.* the relict of the ſaid *J. B.* and the ſaid *T.* and his wife did not duly make and execute ſuch mortgage or ſecurity as aforeſaid, or any other, and what mortgage or ſecurity of the ſaid freehold and copyhold premiſſes, or any, and what part thereof, unto the beforenamed *R. W.* and by what deeds or inſtruments, when dated and executed, and for what conſideration really and truly paid, and when, and to whom, and where, and before whom, and whether ſuch aſſignment was made of the ſaid mortgage to the ſaid *D.* as aforeſaid, and when, and who are parties thereto, and by whom was the ſame executed, and before what witneſſes, and where do thoſe witneſſes live, and may be found or heard of, and whether ſuch ſurrender was made to the ſaid *D.* as aforeſaid, and what conſideration money was really paid, by the ſaid *D.* for ſuch aſſignment and ſurrender, and when, and where, and before whom was the ſame paid; and whether upon ſurrendering the ſaid copyhold premiſſes to the ſaid *D.* as aforeſaid, ſatisfaction was not acknowledged upon all former ſurrenders, made by way of mortgage of the ſame premiſſes as aforeſaid, and whether the ſaid *A.* the wife of ſaid *R. T.* did not die about the time aforeſaid, without making any diſpoſition of her equity of redemption of and in the ſaid mortgaged premiſſes, or any part thereof, and whether the right and equity of redemption of the ſaid *A. T.* did not, on her death, deſcend to her two daughters, ſubject to the eſtate for life of the ſaid *R. T.* their father, in the ſaid freehold premiſſes, as tenant by the courteſy of *England*, and if the ſaid *T.*'s ſaid daughters were not infants of ſuch reſpective ages as aforeſaid, at the death of their ſaid mother, and whether the ſaid *R. T.* did not continue in poſſeſſion of the ſaid mortgaged pre-

miſſes, and pay all intereſt on the aforeſaid mortgage until the twenty-ſixth day of *March* 1730. or to what other time, and whether the ſaid *R. T.* and his wife made any, and what further mortgage to the ſaid *D*—— or the ſaid *E. A.* by any, and what deeds, ſurrenders, or other inſtruments, and when dated and executed, and for what conſideration really and truly paid, and when, and where, and by whom, to whom, and before whom was the ſame ſo paid, and that he, the ſaid *E. A.* may ſet forth the date, ſubſtance, and ſhort contents of all deeds, ſurrenders, and other ſecurities whatſoever, in his cuſtody or power, any way affecting the ſaid mortgaged premiſſes, either freehold or copyhold, or any part thereof; and whether he, the ſaid *A.* did not, for the reaſons aforeſaid, or for what other reaſons, apply to the ſaid *D.* and perſuade him to get himſelf admitted to all the ſaid copyhold premiſſes, and whether the ſame are not held of four ſeveral manors, and if the fines due to the Lords of the ſaid manors, or any, and which of them, are not arbitrary, and what ſuch fines and ſteward fees did amount unto, on the ſeveral admiſſions of the ſaid *D.* and *A.* reſpectively, and if the ſaid *D.* was not content with his ſecurity without ſuch admiſſion, 'till ſuch application was made to him by the ſaid *A.* as aforeſaid, and if ſuch application was not made by the ſaid *A.* as aforeſaid, and with intent to load the ſaid eſtate with expence, ſo that the ſaid *T.* and his children might be obliged to ſell the ſame, and whether he the ſaid *A.* did not then deſign to become the purchaſer thereof, and with that view did not procure the ſaid *D.* to aſſign his ſaid ſecurities and ſurrender the ſaid copyhold premiſſes to him the ſaid *A.* and if he the ſaid *A.* did not frequently, by himſelf or agents, apply to the ſaid

D. in order to prevail on him to make ſuch aſſignment and ſurrender, and if the ſaid *A.* did not pay, or agree to pay the ſaid *D.* ſome premium, preſent, or other gratuity or reward for ſo doing, over and above what was juſtly due on the ſaid ſecurities, and whether the ſaid *A.* did ſettle any account with the ſaid *D.* of what was due to him for principal and intereſt on the ſaid ſecurities, and that he may ſet forth ſuch account in the very words and figures thereof, and whether he hath been admitted to the ſaid copyhold premiſſes or any, or what part thereof, and when, and what did the fines and fees, on ſuch admiſſion amount unto, and that the ſaid *E. A.* may ſet forth, whether the ſaid *R. T.* and his wife did ever levy any fine or make any ſurrender of the ſaid freehold or copyhold premiſſes, or any, and what part thereof, unto the ſaid *D.* or *E. A.* or either of them, for the ſecuring the ſaid ſum of four hundred and eighty pounds and intereſt, as herein is ſet forth, and that he may ſet forth when ſuch fine was levied (if there be any ſuch) and what were the uſes thereof declared to be, and by what deed or writing, when dated and executed, and who are parties and witneſſes thereto, and what conſideration was really paid for the ſame, by whom, and to whom, and when, where, and before whom, and when the ſaid *E. A.* or his agents firſt of all had poſſeſſion of the ſaid mortgaged premiſſes, and from what time he or they have received the rents and profits thereof, and who had the poſſeſſion, and received the rents of the ſaid premiſſes until that time, and that he may ſet forth a full, true and juſt account of the rents and profits of all and ſingular the ſaid mortgaged premiſſes, received by him or any other perſon or perſons for his uſe, or which, without his wilful default, might have been received,

ceived, and when, and of whom, and for what the ſame were ſeverally received, and when, and at what time in particular the ſaid *R. T.* died, and whether his ſaid daughters did not attain their reſpective ages of twenty-one years at the ſeveral times aforeſaid, or at what other times; and whether the ſaid *A.* the daughter of the ſaid *R. T.* did not intermarry with the ſaid *R. P.* as aforeſaid, and whether your orator hath not purchaſed the equity of redemption of all the ſaid mortgaged premiſſes, both freehold and copyhold of the ſaid *R. P.* and *A.* his wife, and *S. T.* the daughters and heirs of the ſaid *A.* the wife of the ſaid *R. T.* and whether the ſame hath not been ſo conveyed and ſurrendered to your orator as aforeſaid, and whether he the ſaid *E. A.* hath not refuſed to admit your orator to that part of the copyhold premiſſes which are held of the ſaid manor of —— with —— and if he hath not taken the court-books from his ſtewards on purpoſe to prevent your orator's admiſſion to the ſaid premiſſes, and whether your orator hath not made ſuch application, and ſuch offers and requeſts to him the ſaid *A.* as aforeſaid, and why, and for what reaſon he refuſed or declined to accept of ſuch offers, or to comply with ſuch requeſts, and if it was not with deſign to increaſe the debt on the ſaid mortgaged premiſſes, ſo that the ſame may not be worth redemption; and more particularly, that the ſaid *A.* may anſwer whether your orator hath not cauſed his purchaſe deeds to be produced and ſhewn to him the ſaid *A.* and whether he did not inſpect or peruſe the ſame, or whether your orator's agent did not read the ſame over to him, and whether he hath not refuſed to produce or ſhew his ſecurities to your orator or his agents, and hath declared, that he was adviſed not to produce the ſame, and whether the

ſaid *A.* hath not pretended to be abſolutely intitled to the ſame mortgaged premiſſes, and to the equity of redemption thereof, under ſome, and what articles of agreement, alledged to be entered into between him and the ſaid *R. T.* and whether the ſaid *R. T.* had a right to make ſuch agreement, and what conſideration was paid for the ſame, and whether the ſaid *A.* and *S. T.* the daughters of the ſaid *R. T.* were, or were not infants at the time ſuch agreement was entered into, and whether he the ſaid *A.* doth not now inſiſt on ſuch agreement or not; and that the ſaid *E. A.* may ſet forth what is now juſtly due to him, for principal and intereſt on any, and what mortgage or mortgages of the freehold or copyhold premiſſes aforeſaid, or any, and what part thereof, and how he computes and makes out the ſame, and if he inſiſts on any principal ſum, over and beſides the ſaid four hundred and eighty pounds, that then he may particularly ſet forth and diſcover how, and by what deeds, ſurrenders, or other conveyances the ſame is become chargeable on the premiſſes aforeſaid, and that he may anſwer and ſet forth, whether he hath not ploughed up the land-marks and made divers new fences and incloſures on the ſaid premiſſes, in a very unneceſſary and unprofitable manner, for the purpoſes, and with the intent beforementioned; and that the ſaid *E. A.* may anſwer all and ſingular the premiſſes, not only as to what he himſelf knows, but alſo as to what he hath heard, been informed, and believes concerning the ſame reſpectively, and when, and by whom he had ſuch information; and that the ſaid *E. A.* may come to a fair and juſt account with your orator for the rents and profits of all the ſaid mortgaged premiſſes, both freehold and copyhold, which have been received by him, or any other perſon or perſons

perſons for his uſe, or which, without his wilful default, might have been received, and that upon payment of what ſhall appear to be juſtly due to the ſaid *E. A.* on the aforeſaid mortgages for four hundred and eighty pounds, and intereſt (after a deduction of what hath been, or might have been ſo received by him as aforeſaid) your orator may be let in to a redemption of all the ſaid mortgaged premiſſes; and that the ſaid *A.* and all perſons claiming under him, may convey and ſurrender all the ſaid premiſſes to your orator and his heirs, or as he ſhall direct and appoint, free from all incumbrances, done by him the ſaid *A.* or any perſon or perſons claiming under him; and that your orator may be further and otherwiſe relieved in the premiſſes, as the nature of his caſe ſhall require, and according to the rules of equity and good conſcience. May it pleaſe, *&c.*

A bill for redemption of a mortgage.

HUMBLY complaining ſheweth unto your Lordſhip your orator *A. B.* of, *&c.* That your orator having occaſion to borrow the ſum of ſix hundred pounds, did apply himſelf for that purpoſe to *C. D.* of, *&c.* who agreed to lend to your orator the ſame; and your orator, for ſecuring the re-payment thereof, with intereſt, did agree to mortgage to the ſaid *C. D.* the meſſuages, *&c.* and premiſſes herein after mentioned, and accordingly your orator did execute to the ſaid *C. D.* one indenture bearing date on or about the —— day of —— and which was made between your orator of the one part, and the ſaid *C. D.* of the other part, and by the ſaid indenture your orator, in conſideration of the ſum of ſix hundred pounds, to him in hand paid, by the

the ſaid *C. D.* did demiſe, *&c.* unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns, All that, *&c.* To hold unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns for the term of 99 years, ſubject to a proviſo or condition of redemption on payment of the ſaid ſum of ſix hundred pounds with intereſt for the ſame, on the —— day of ——— 1739; as in and by the ſaid indenture of mortgage, in the cuſtody of the ſaid *C. D.* when produced, will more fully and at large appear; and your orator farther ſheweth unto your Lordſhip, that your orator hath paid all intereſt for the ſaid ſum of ſix hundred pounds till *Chriſtmas* 1740. to the ſaid *C. D.* but the ſaid *C. D.* in order to diſtreſs your orator, hath cauſed declarations in ejectment to be delivered to the tenants in poſſeſſion of the ſaid premiſſes, and doth threaten that he will get into poſſeſſion thereof, and receive the rents and profits of the ſaid premiſſes, altho' your orator hath always been, and ſtill is ready to pay to the ſaid *C. D.* what is due to him for principal and intereſt on the ſaid mortgage, and did actually on or about the —— day of ——— 1740. tender and offer to pay to the ſaid *C. D.* the ſaid ſum of ſix hundred pounds together with all intereſt due for the ſame, at the time the ſaid tender was made, being the ſum of ———, being for three months intereſt then due for the ſaid ſum of ſix hundred pounds at five pounds by the hundred by the year; and alſo the ſum of ——— for the coſts of the ſaid declarations; and your orator well hoped that the ſaid *C. D.* would have received the ſaid ſeveral ſums of money ſo offered and tendered to be paid to him by your orator as aforeſaid, and either have delivered up unto your orator the ſaid mortgage deed to be cancell'd, or have re-aſſign'd the ſame to your orator, as in juſtice and equity he ought

to

to have done: *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *C. D.* combining and confederating himſelf to and with divers other perſons, at preſent unknown to your orator, whoſe names when diſcovered your orator humbly prays may be inſerted in this his bill of complaint, with apt and proper words to charge them; he the ſaid *C. D.* (in order to deprive and defeat your orator of the benefit of redeeming the ſaid mortgaged premiſſes) does pretend and give out in ſpeeches, that your orator did not borrow of the ſaid *C. D.* the ſaid ſum of ſix hundred pounds, nor execute the ſaid mortgage deed to the ſaid *C. D.* for ſecuring the repayment thereof with intereſt as aforeſaid, but does pretend that the ſaid ſum of ſix hundred pounds was paid to your orator in conſideration of the abſolute purchaſe of the ſaid premiſſes for the ſaid term of 99 years; and at other times he does admit that a deed of the ſame date as above-mentioned, and made by the ſame parties, was executed by your orator, but that your orator did thereby abſolutely diſpoſe of the ſaid term of 99 years without ſuch proviſo of redemption as above-mentioned; whereas your orator chargeth, and ſo the ſaid *C. D.* well knows, as the truth really is, that the ſaid ſum of ſix hundred pounds was borrowed upon the terms aforeſaid, and upon no other conſideration whatſoever, and that ſuch deed with ſuch proviſo as above-mentioned was executed by your orator as aforeſaid, for the ſecuring the repayment of the ſaid ſum of ſix hundred pounds with intereſt as aforeſaid, and that no other deed was executed by your orator relating to the ſaid ſum of ſix hundred pounds or otherwiſe, than what your orator has above mentioned; and at other times the ſaid *C. D.* does admit that ſuch deed was executed as above mentioned, but does pretend that at the time of the tender above-

mentioned,

mentioned, great arrears of intereſt were due and owing from your orator to the ſaid *C. D.* amounting to the ſum of one hundred and fifty pounds and upwards, whereas your orator chargeth, and ſo the truth really is, that no more than the ſum of ſeven pounds ten ſhillings was due and owing from your orator to the ſaid *C. D.* for the intereſt of the ſaid ſix hundred pounds at the time of the ſaid tender; and upon the pretences aforeſaid the ſaid *C. D.* refuſes to come to any manner of account with your orator, or to reconvey the ſaid premiſſes to him, and is proceeding at law as faſt as he can, in order to get into poſſeſſion of the ſaid premiſſes; *All which actings, doings and pretences* of the ſaid *C. D.* and his confederates are contrary to equity and good conſcience, and tend to your orator's apparent wrong and injury. *In tender conſideration whereof*, and foraſmuch as your orator is altogether remedileſs in the premiſſes by the ſtrict rules of the common law, and cannot have any diſcovery or relief touching the matters and things aforeſaid, without the aid and aſſiſtance of this honourable court, where matters of account and redemption of eſtates are properly cognizable and relievable; *To the end therefore*, that the ſaid *C. D.* and his confederates (when diſcovered) may upon his and their corporal oaths (to the beſt of his and their remembrance, knowledge and belief) true, perfect and direct anſwer make to all and ſingular the matters and things aforeſaid, as fully as if the ſame were herein again repeated, and they thereunto particularly interrogated, and more eſpecially that the ſaid *C. D.* may ſet forth whether your orator did not, and when, apply to him to borrow the ſaid ſum of ſix hundred pounds, or any other ſum of money; and whether ſuch deed was not executed by your orator, with ſuch proviſo for the repayment of the

ſaid

ſaid ſum of ſix hundred pounds with intereſt at 5 *per cent.* as above-mentioned, or how otherwiſe, and whether your orator did not conſtantly, and to what time, pay the intereſt that became due for the ſaid ſum of ſix hundred pounds to the ſaid *C. D.* or ſome perſon or perſons, for his uſe and by his order or direction, and whether your orator did not make ſuch tender of ſuch ſeveral ſums of money, as above-mentioned, to the ſaid *C. D.* or how otherwiſe, and that the ſaid *C. D.* may ſet forth what was due and owing to him on the ſaid mortgage for principal and intereſt, and his coſts at law reſpectively, at the time of the ſaid tender, and that he may ſet forth why, or for what reaſon, he refuſed to receive the ſaid ſeveral ſums of money ſo tendered as above-mentioned; and that your orator may be at liberty to redeem the ſaid mortgaged premiſſes; and that the ſaid *C. D.* upon your orator's paying to him what ſhall appear to be due to him, for principal and intereſt on the ſaid mortgage, together with his coſts at law at the time the ſaid ſeveral ſums of money were ſo tendered to him by your orator as aforeſaid, which your orator hereby offers to pay, and that thereupon the ſaid *C. D.* may reconvey and reaſſign to your orator the premiſſes aforeſaid, free and clear of all incumbrances done by him, or any claiming by, from or under him; And that your orator may have and receive ſuch farther and other relief in the ſaid premiſſes, as the nature of this your orator's caſe doth or may require, and as to your Lordſhip ſhall ſeem meet; *May it pleaſe your Lordſhip* (the premiſſes conſidered) to grant unto your orator his Majeſty's moſt gracious writ or writs of *ſubpœna* to be directed to the ſaid *C. D.* and his confederates when diſcovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited,

limited, personally to be and appear before your Lordship in this honourable court, then and there upon their several and respective corporal oaths, true and perfect answer to make to all and singular the premisses; and farther to stand to and abide such order and decree therein as to your Lordship shall seem meet. And your orator shall ever pray, *&c.*

A bill to foreclose.

HUMBLY complaining, sheweth unto your Lordship, your orator *R. S.* of——, Gent. That in or about the year of our Lord 1727. *P. J.* of——— in the county of ———yeoman, being or pretending to be seised in fee, or of some other good and sufficient estate of inheritance, of and in the manor, messuages, farms, lands, tenements and hereditaments herein after mentioned; and having occasion for money, did apply to your orator, and desire your orator to lend him the said *P. J.* the sum of———, and in order to secure the repayment of the same with interest, after the rate of——by the hundred by the year, did propose to mortgage to your orator the said manor, *&c.* which he did affirm to your orator were free from all prior incumbrances, save a term of five hundred years in some part of the same premisses, which (as the said *P. J.* informed your orator) was then vested in *L. M.* of —— in the county of——Gent. **In trust** for the said *P. J.* his heirs and assigns, and to be disposed of and assigned as he or they should direct; And your orator further sheweth unto your Lordship, that your orator did comply with the said request of the said *P. J.* and did accordingly lend him the said sum of——, and for securing the repayment

thereof with intereſt as aforeſaid, by indentures of leaſe and releaſe bearing date reſpectively the twentieth and twenty-firſt day of *April* 1727. and made between the ſaid *P. J.* (by the name and deſcription of, *&c.*) [*if neceſſary*] and *Q.* his wife, of the one part, and your orator and one *A. B.* of, *&c.* Eſq; (ſince deceaſed) of the other part, the ſaid *P. J.* for and in conſideration of the ſum of —— of lawful, *&c.* to him in hand paid by your orator, and of five ſhillings paid to him by the ſaid *A. B.* (which ſum of —— your orator charges was really and truly paid by your orator to the ſaid *P. J.*) did grant, bargain, ſell, releaſe and confirm unto your orator and the ſaid *A. B.* (in their actual poſſeſſion then being by virtue of the ſaid indenture of leaſe for a year, and by force of the ſtatute for transferring uſes into poſſeſſion) and to their heirs and aſſigns, All that the manor of *G.* with its rights, members and appurtenances in the county of *E.* and all meſſuages, barns, buildings, edifices, ſtables, yards, gardens, orchards, lands, tenements, wood-grounds, leaſows, commons, common of paſture, demeſne lands, courts baron, courts leet, perquiſits and profits of courts, fines, heriots, reliefs, amerciaments, rents, ſervices, eſcheats, waifs, eſtrays, deodands, felons goods, warrens, heaths, mines, moors, marſhes, patronages and benefices of churches and chapels, advowſons, franchiſes, privileges, profits, commodities, advantages, emoluments, juriſdictions and hereditaments whatſoever to the ſaid manor belonging or appertaining, or reputed to belong or appertain thereunto; *And* alſo all that meſſuage or tenement, with the appurtenances, ſituate, ſtanding and being in ——— in the ſaid county of —— on the eaſt-ſide the ſaid green there; and alſo all that orchard and cloſe of paſture thereunto adjoining and belonging; and alſo all thoſe ſeveral

pieces or parcels of arable land, lay, meadow and graſs-ground, and lot-graſs, with their appurtenances, lying diſperſedly within the common fields, liberties, meadows, pariſhes, boundaries and precincts of —— and —— in the ſaid county of ——, containing by eſtimation fourſcore acres; And alſo all thoſe ſeveral pieces or parcels of arable land, lay, meadow and paſture or graſs ground, and lot-graſs, with their appurtenances, lying and being diſperſedly within the common and open fields, liberties, meadows, pariſhes, precincts, and territories of —— and —— aforeſaid, containing by eſtimation forty-three acres, thentofore in the tenure or occupation of *S. C.* and *W. J.* their aſſignee or aſſignees; And alſo all that meſſuage, tenement or farm-houſe, with the appurtenances, ſituate, ſtanding and being in —— aforeſaid, and thentofore in the poſſeſſion of *T. B.* yeoman (a meſſuage or tenement there or then late of *W. P.* on the north-eaſt part thereof, and the meſſuage or tenement of the ſaid *P. J.* therein and herein before mentioned on the ſouth-eaſt part thereof) which ſaid laſt mentioned meſſuage or farm-houſe was thentofore purchaſed by the ſaid *P. J.* of and from one *T. B.* And all other the meſſuages, lands, tenements and hereditaments whatſoever of him the ſaid *P. J.* in poſſeſſion, reverſion, or remainder, ſituate, lying or being in the pariſhes of —— and —— aforeſaid in the ſaid county of —— or any of them, and the reverſion and reverſions, remainder and remainders, rents, iſſues and profits thereof, and all the eſtate, right, title, intereſt, claim and demand whatſoever of him the ſaid *J. P.* of, in and to the ſame manor, lands and premiſſes, and every part and parcel thereof; To hold the ſaid manor, meſſuages, farms, lands, tenements, hereditaments and premiſſes, and all and ſingular other the premiſſes mentioned to be

thereby granted and releaſed as aforeſaid, with their and every of their appurtenances, unto your orator and the ſaid *A. B.* their heirs and aſſigns, To the only proper uſe and behoof of your orator and the ſaid *A. B.* their heirs and aſſigns for ever: Nevertheleſs, as to the eſtate of the ſaid *A. B.* and his heirs, in truſt for your orator, his heirs and aſſigns; ſubject nevertheleſs to a proviſo or condition for redemption in the ſaid indenture of releaſe contained; if the ſaid *P. J.* his heirs, executors, adminiſtrators or aſſigns, or any of them, ſhould well and truly pay or cauſe to be paid unto your orator, his executors, adminiſtrators or aſſigns, at or in the——in the pariſh of——in the ſaid county of———, the full ſum of——of lawful money of *Great Britain* at or upon the——day of——next enſuing the date thereof, and now long ſince paſt, without any deduction whatſoever, in manner ſet forth in the ſaid indenture of releaſe; And the ſaid *P. J.* did in and by the ſaid indenture of releaſe, covenant and agree, to and with your orator and the ſaid *A. B.* that he and the ſaid *Q.* his wife ſhould and would, before the end of *Eaſter* term next enſuing the day of the date of the ſaid indenture of releaſe, acknowledge and levy (and which was accordingly acknowledged and levied) in due form of law one fine *Sur conuzance de droit come ceo*, &c. to your orator and the ſaid *A. B.* and the heirs of your orator, of the ſaid manor, lands and premiſſes ſubject to ſuch redemption as aforeſaid; And the ſaid *P. J.* did further covenant and agree, that the ſaid manors, meſſuages, farms, lands, hereditaments and premiſſes thereby releaſed as aforeſaid, were free from all incumbrances, except and other than the ſaid term of five hundred years, of and in the ſaid manor and premiſſes, or the greateſt part thereof, then veſted in the ſaid *L. M.* In truſt for the ſaid

P. J.

P. J. and his heirs, and to be diſpoſed of and aſſigned as he or they ſhould direct; which term the ſaid *A. W.* did thereby direct and declare the ſaid *L. M.* his executors and adminiſtrators, ſhould ſtand poſſeſſed of and intereſted in, In truſt only for your orator and the ſaid *A. B.* and their heirs, to attend the inheritance of the ſame premiſſes, ſubject to ſuch redemption as aforeſaid, with a covenant, that in caſe of failure of payment of the ſaid ſum of ——— according to the ſaid proviſo, your orator and the ſaid *A. B.* might enter upon and enjoy the ſaid mortgaged premiſſes, and the rents and profits thereof, without any interruption of the ſaid *P. J.* his heirs or aſſigns, or any other perſon whatſoever [*Here ſet forth the covenant for further aſſurance*] as in and by the ſaid indentures of leaſe and releaſe duly executed by the ſaid *P. J.* and Q. his wife, now in your orator's cuſtody, and ready to be produced, as this honourable court ſhall direct, and to which your orator, as alſo to the record of the ſaid fine, for greater certainty refers himſelf, may more fully and at large appear; And your orator charges, that the ſaid ſum of ——— or any part thereof, was not paid to your orator or any other perſon on his account according to the ſaid proviſo in the ſaid indenture of releaſe contained at the time therein mentioned, or at any other time; and your orator further ſheweth unto your Lordſhip, that the ſaid *P. J.* having a further occaſion for money, did ſometime in or about the latter end of *February*, or on the firſt of *March* 1734. again apply to your orator to lend him the further ſum of ———, and in order to ſecure the repayment of the ſame with intereſt after the rate of ——— by the hundred by the year, offered to charge the ſaid mortgaged premiſſes therewith, which your orator conſented

to, and accordingly did advance, lend and pay to the ſaid *P. J.* the ſaid ſum of ———, and for ſecuring the repayment thereof with intereſt as aforeſaid, by an indorſement made upon the back of the ſaid indenture of releaſe, bearing date the firſt day of *March* 1734. reciting that the ſaid principal ſum of —— remained wholly due and unpaid, but that all intereſt for the ſame was fully paid and ſatisfied to the day of the date thereof; and further reciting (and which your orator expreſsly charges to be true) that the ſaid *P. J.* by his bond or obligation bearing even date with the ſaid indorſement was become bound to your orator in the penal ſum of ——— conditioned for the payment of the ſaid ſum of ——— with intereſt for the ſame, after the rate of —— for every hundred pound on the firſt day of *September* then next enſuing, It is by the ſaid indorſement witneſſed, that for better ſecuring the payment of the ſaid ſum of ——— with intereſt for the ſame, after the rate of —— *per cent. per annum* to your orator, his executors, adminiſtrators and aſſigns, the ſaid *P. J.* for himſelf, his heirs, executors and adminiſtrators, and for every of them, did thereby covenant, promiſe and agree, to and with your orator, his executors, adminiſtrators and aſſigns, and every of them, that the ſaid ſum of ——— and intereſt, after the rate aforeſaid, to be computed from the day of the date thereof, was and ſhould be placed, charged and ſecured in and upon the manor, meſſuages, farms, lands, tenements and hereditaments compriſed in the ſaid indenture of releaſe, and that the manor, meſſuages, farms, lands and hereditaments, with their and every of their appurtenances in the ſaid indenture mentioned to be releaſed to your orator and his heirs, ſhould remain to your orator, his executors, adminiſtrators and aſſigns,

aſſigns, a ſecurity as well for the ſaid ſum of —— and intereſt for the ſame, after the rate of —— for every hundred pound by the year, to be accounted from the day of the date thereof, as for the ſaid ſum of —— ſecured by the ſaid indenture of releaſe, and the growing intereſt thereof, after the rate of —— for every hundred pounds by the year; and that the ſaid manor, meſſuages, farms, lands, tenements and hereditaments, or any of them, or any part thereof, ſhould not be redeemed or redeemable until not only the ſaid —— and the growing intereſt thereof as aforeſaid, but alſo the ſaid —— then advanced and lent, and the intereſt thereof as aforeſaid, ſhould be fully paid and ſatisfied to your orator, his executors, adminiſtrators or aſſigns, as in and by the ſaid indorſement on the back of the ſaid releaſe, and the ſaid bond duly executed by the ſaid *P. J.* and to which your orator for greater certainty refers himſelf, may more fully and at large appear. And your orator further ſheweth unto your Lordſhip, that the ſaid ſum of ——, or any part thereof, hath not been paid to your orator, neither was the ſaid ſum of ——, or any part thereof, paid to your orator according to the condition in the ſaid in part recited bond at the time therein mentioned, or at any time ſince; but the ſaid two ſeveral ſums of —— and —— are now due and owing to your orator, together with a great arrear of intereſt on the ſaid ſeveral ſums after the reſpective rates aforeſaid; and the ſaid *A. B.* being dead, the eſtate and intereſt in the ſaid mortgaged premiſſes is now become abſolute in your orator and his heirs, and your orator well hoped that the ſaid *P. J.* would either have paid your orator the ſaid ſeveral ſums of —— and ——, and the intereſt thereof reſpectively at the rates

aforeſaid, or would have ſuffered your orator to have peaceably and quietly held and enjoyed the ſaid premiſſes; and for that purpoſe your orator hath frequently and in a friendly manner applied himſelf to the ſaid *P. J.* and requeſted him to pay the ſaid ſeveral ſums of ——— and ——— and the intereſt due for the ſame reſpectively, or elſe quietly and peaceably to deliver up poſſeſſion to your orator of the ſaid mortgaged premiſſes, together with all deeds, evidences, writings, eſcripts, and muniments, court-rolls, rent-rolls, and minutes of courts, relating to or concerning the ſame; and to releaſe all his right, title and equity of redemption of, in and to the ſame premiſſes to your orator and his heirs; the ſaid *P. J.* well knowing (as your orator charges the truth to be) that the ſaid premiſſes are a very ſlender and ſcanty ſecurity for the principal and intereſt now due to your orator thereon; And your orator well hoped the ſaid *P. J.* would have complied with ſuch reaſonable requeſt of your orator, as in juſtice and equity he ought to have done: *But now ſo it is*, may it pleaſe your Lordſhip, That the ſaid *P. J.* combining and confederating himſelf to and with the ſaid *L. M.* and divers other perſons, at preſent unknown to your orator, whoſe names, when diſcovered, your orator prays may be made parties hereto, with proper and apt words to charge them, now to injure and aggrieve your orator in the premiſſes, and to defraud him of the ſaid principal monies and intereſt due to him, ſometimes gives out and pretends, that the ſaid premiſſes were mortgaged by the ſaid *P. J.* to the ſaid *L. M.* for the ſaid term of 500 years, for ſecuring to him ſome very conſiderable ſum of money; and that at the time ſuch mortgage was made to your orator as aforeſaid, he the ſaid *P. J.* had only the equity of redemption

demption of the ſame; whereas your orator expreſly charges (as the truth really is) that no money was due to the ſaid *L. M.* on ſuch term, but that the ſaid *L. M.* is ſeiſed of the ſaid term of 500 years, and his name made uſe of barely as a truſtee; and the ſaid term is now veſted in him, in truſt for your orator and his heirs, to attend the inheritance of the ſaid premiſſes; nevertheleſs the ſaid *L. M.* refuſes to let your orator bring an ejectment, in his name, for recovery of the premiſſes compriſed in the ſaid 500 years term; and at other times the ſaid *P. J.* pretends that he hath confeſſed judgments, ſtatutes and recognizances to ſeveral perſons for ſeveral conſiderable ſums of money, and made ſeveral other grants, conveyances, and ſecret incumbrances, which will affect the ſaid premiſſes, prior to your orator's title to the ſame, but refuſes to diſcover the ſame, or to whom he hath ſo ſold, mortgaged or incumbered the premiſſes as aforeſaid, or the reſpective conſiderations thereof, or the perſons to whom he hath confeſſed ſuch judgments, ſtatutes, or recognizances, and for what ſums and what conſideration, ſo that your orator cannot proceed at law for recovery of the ſaid mortgaged premiſſes, the ſaid *P. J.* threatening, in caſe your orator proceeds at law, to ſet up the ſaid incumbrances, and the ſaid truſt-term of 500 years in the ſaid *L. M.* All which they pretend are prior to your orator's ſaid mortgage; whereas your orator charges, that ſuch conveyances, mortgages or other incumbrances (except the ſaid truſt-term) are not prior to your orator's ſaid mortgage (if any ſuch there be) or if any of them are prior to your orator's ſaid mortgage, the ſame are voluntary and fraudulent, and made without any conſideration really and truly paid, and ſuch judgments, ſtatutes and recognizances, were not for

the

the payment of any juſt debt, but without any conſideration, and voluntary, and contrived on purpoſe to defraud the juſt creditors of the ſaid *P. J.* All which actings and doings are contrary to equity and good conſcience, and tend to your orator's manifeſt wrong and injury. **In tender conſideration** whereof, and foraſmuch as your orator hath no means to diſcover what incumbrances there are upon the ſaid mortgaged premiſſes, or can foreclоſe the equity of redemption thereof, but in a court of equity where matters of this nature are properly cognizable, and the rather for that your orator's witneſſes who could prove the truth of all and ſingular the premiſſes, are either dead or gone into parts beyond the ſeas intirely unknown to your orator; **To the end** therefore, that the ſaid *P. J.* and *L. M.* and their confederates (when diſcovered) may, upon their ſeveral and reſpective corporal oaths, true, full, and perfect anſwer make to all and ſingular the premiſſes, as fully and particularly as if the ſame were herein again repeated and they interrogated, according to the beſt of their reſpective knowledge, information, or belief; and more particularly whether the ſaid *P. J.* was not, in or about the year 1727. or at ſome other and what time, and when, ſeiſed in fee, or of ſome other, and what eſtate of and in the manor, meſſuages, farms, lands, tenements, hereditaments, and premiſſes herein beforementioned, or ſome and which of them, and whether he did not apply to your orator to borrow the ſum of —— or ſome other, and what ſum of money, and propoſe to ſecure it with intereſt as aforeſaid, in the manner herein before-mentioned, or in any other, and what manner, and whether your orator did not accordingly advance, and lend to him the ſaid *P. J.* the ſaid ſum of —— and whether the ſaid *P. J.*

and

and *Q.* his wife, did not execute ſuch indentures of leaſe and releaſe bearing date reſpectively the twentieth and twenty-firſt days of *April* 1727. or ſome other and what indentures of mortgage of the ſaid premiſſes to your orator, or of any other and what date, and whether the ſaid truſt-term of 500 years was not thereby declared and agreed, or how otherwiſe intended to be veſted in the ſaid *L. M.* in truſt for your orator and his heirs, to attend and wait upon the inheritance of the ſaid premiſſes, or for any other, and what truſt or purpoſe, and whether the ſaid *P. J.* did not again, ſome time in the year 1734. apply to your orator to borrow the further ſum of ——— or ſome other and what ſum of money, and whether your orator did not advance and lend to the ſaid *P. J.* the ſaid ſum of ——— and whether, for ſecuring the repayment thereof with the intereſt as aforeſaid, the ſaid *P. J.* did not execute ſuch bond of ſuch date as is before ſet forth, or ſome other and what bond of the ſame, or any other, and what date, and whether he did not execute ſuch indorſement on the back of the ſaid releaſe as is before ſet forth, bearing date the firſt of *March* 1734. or ſome other, and what indorſement or inſtrument in writing of the ſame, or ſuch like date, tenor, purport or effect, and may admit the ſaid ſeveral indentures of leaſe and releaſe dated the twentieth and twenty-firſt of *April* 1727. and the ſaid bond and indorſement made on the back of the ſaid releaſe, dated the firſt day of *March* 1734. and the payment of the ſeveral conſiderations thereof to be in the ſame manner they are herein before reſpectively ſet forth, or may ſet forth wherein they materially differ, and may ſet forth whether the ſaid ſeveral ſums of ——— and ——— or any part of either of them, hath at any time, and when, been paid by

by any perſon, and whom, to your orator, and may ſet forth how much is now due to your orator for principal and intereſt on his ſaid ſeveral ſecurities, and may ſet forth what incumbrances there are upon the ſaid mortgaged premiſſes, and when, and by whom the ſame were charged or incumbred, and who claim the ſame reſpectively, and may ſet forth the nature and kinds thereof, and whether the ſame are by abſolute ſale, mortgage, ſtatute-merchant, ſtatute-ſtaple, judgments, recognizances, or how otherwiſe, and the dates, tenor, and ſhort contents of ſuch ſeveral incumbrances, and of the deeds, records or other inſtruments or writings treating or relating to the ſame, and may ſet forth the reſpective conſiderations thereof, and when, where, and in whoſe preſence ſuch conſiderations were reſpectively paid, and whether in ſpecie, bills, or how otherwiſe, and whether the ſaid incumbrances, or any, and which of them are now unpaid and unſatisfied, and how much money is now due on the ſame reſpectively, and that the ſaid *P. J.* may be decreed to pay and ſatisfy to your orator the ſaid ſeveral ſums of —— and —— and all intereſt due and to grow due thereon after the reſpective rates aforeſaid, by a ſhort day to be appointed by this honourable court, together with your orator's coſts; and in default thereof, that the ſaid *P. J.* and all perſons claiming under him, may be foreclоſed of and from all equity of redemption or claim, in and to the ſaid mortgaged premiſſes, and every part thereof, and may deliver over to your orator all deeds, charters, evidences, writings, muniments, court-rolls, rent-rolls, and minutes of courts whatſoever, relating to, or concerning the ſaid manor, meſſuages, farms, lands, tenements, hereditaments and premiſſes; and that the ſaid *L. M.* may ſet forth what right or title he

he hath or claimeth of and in the ſaid premiſſes, or any and what part thereof, and whether he is not a truſtee for your orator, and why he refuſes to let your orator bring an ejectment in his name; in order to recover poſſeſſion of the ſaid premiſſes and that the ſaid term of 500 years may be declared to be in truſt for your orator and his heirs, to attend the inheritance of the ſaid premiſſes, and that your orator may have ſuch further and other relief in the premiſſes, as to your Lordſhip ſhall ſeem proper, and ſhall be agreeable to equity and good conſcience. May it pleaſe your Lordſhip, *&c.*

A bill brought by an infant by his next friend againſt executors for a legacy.

To the Right Honourable, &c.

HUMBLY complaining ſheweth unto your Lordſhip your orator *J. W.* ſon of *J. W.* of *D.* in the county of *K.* mariner, an infant under the age of twenty-one years, to wit, of about the age of ſix years, by his ſaid father and next friend, that *J. W.* of *T.* in the county of *Y.* Gent. being ſeiſed and poſſeſſed of a very conſiderable real and perſonal eſtate, did, on or about the fourth day of *March* in the year of our Lord 1742. duly make and publiſh his laſt will and teſtament in writing; and thereby, amongſt other things, deviſed and bequeathed as follows: [*here cite the deviſe in the will*] And that upon or ſoon after the death of the ſaid teſtator, to wit, on or about the day of the ſaid *E.* and *W. W.* (*the executors named in the will*) duly proved the ſaid will in the prerogative court of *York*, and took upon themſelves the burthen and execution thereof; and by virtue thereof poſſeſſed themſelves of all the

the ſaid teſtator's real and perſonal eſtate, goods, chattels and effects, to the amount of ten thouſand pounds and upwards: And your orator further ſheweth unto your Lordſhip, that he hath by his ſaid father and next friend, ſeveral times ſince his ſaid legacy of three hundred pounds was due, applied to the ſaid *E.* and *W. W.* to have the ſame paid or ſecured for your orator's benefit; and your orator well hoped that the ſaid *E.* and *W. W.* would have complied therewith, without ſuit, as in conſcience and equity they ought to have done. *But now ſo it is, may it pleaſe your Lordſhip,* that the ſaid *E.* and *W. W.* combining and confederating together to and with divers other perſons, as yet to your orator unknown, whoſe names when diſcovered, your orator prays may be herein inſerted as defendants, and they made parties hereto, with apt words to charge them, now to injure and oppreſs your orator, the ſaid confederates reſpectively do now abſolutely refuſe to pay or ſecure the payment of your orator's ſaid legacy, ſometimes pretending that the ſaid teſtator did not make any ſuch will; and at other times they admit that the ſaid teſtator made ſuch will, and that they have proved the ſame, and poſſeſſed themſelves of all his real and perſonal eſtate; but then they pretend that the ſame was very ſmall and inconſiderable, and not near ſufficient to pay and ſatisfy his the ſaid teſtator's juſt debts, legacies and funeral expences, and that they have applied and diſpoſed of the ſame towards ſatisfaction thereof; and at the ſame time the ſaid confederates do reſpectively refuſe to ſet forth and diſcover what ſuch real and perſonal eſtate was, or the particulars whereof the ſame conſiſted, or the value thereof, or how much thereof they have ſo applied, and to whom, and for what paid, or what is become thereof particularly; whereas your orator doth

charge

charge the truth to be that the ſaid teſtator died poſſeſſed of ſuch real and perſonal eſtate to the full value aforeſaid, and which was much more than would pay all his the ſaid teſtator's juſt debts, legacies and funeral expences; and the ſaid confederates or one of them have poſſeſſed and converted the ſame to their own uſes, without making any ſatisfaction to your orator for his ſaid legacy. All which actings, pretences and doings of the ſaid confederates are contrary to equity and good conſcience, and tend to the manifeſt injury and oppreſſion of your orator: **In tender conſideration** whereof, and for that your orator is remedileſs in the premiſſes, at and by the ſtrict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable; **To the end therefore** that the ſaid confederates may reſpectively, full, true, direct, and perfect anſwer make, upon their reſpective corporal oaths, according to the beſt of their reſpective knowledge, information and belief, to all and ſingular the matters and charges aforeſaid, as fully in every reſpect, as if the ſame were here again repeated and they thereunto particularly interrogated; and more eſpecially that they may reſpectively ſet forth and diſcover, according to the beſt of their knowledge, remembrance, information and belief, whether the ſaid teſtator *J. W.* duly made and executed ſuch laſt will and teſtament in writing, of ſuch date, and to ſuch purport and effect as aforeſaid, and thereby bequeathed to your orator ſuch legacy of three hundred pounds as aforeſaid, or any other, and what laſt will, of any other, and what date, and to any other, and what purport or effect particularly, and that they may produce the ſame, or the probate thereof, to this honourable court, as often as there ſhall be occaſion; and whether by ſuch will

or

or any other, and what will, the ſaid teſtator appointed any and what other executors by name, and when the ſaid teſtator died, and whether he revoked or altered the ſaid will before his death, and when, and before whom, and in what manner, and whether the ſaid confederates, or one, and which of them, proved the ſaid will, and when, and in what court, and that they may reſpectively ſet forth whether your orator, by his ſaid father and next friend, hath not ſeveral times, ſince his ſaid legacy was payable, applied to them to have the ſame paid or ſecured to be paid for his benefit, or to that effect; and whether the ſaid confederates or one, and which of them, refuſed or neglected to comply with ſuch your orator's requeſts, and for what reaſons reſpectively, and whether ſuch refuſal is grounded upon the pretences herein before charged, or any, and which of them, or any other, and what pretences particularly, and that the ſaid confederates may admit aſſets of their ſaid teſtator come to their hands ſufficient to ſatisfy your orator's ſaid legacy, and ſubject thereto, or otherwiſe may ſet forth a particular account of the real and perſonal eſtate, goods and effects of which the ſaid teſtator died poſſeſſed or intitled unto, and the particulars whereof the ſame conſiſted and the values thereof, and how much thereof they have applied in diſcharge of his the ſaid teſtator's debts, legacies and funeral expences, and to whom, and for what paid, and what is become thereof particularly, and whether the ſaid teſtator did not die poſſeſſed of real and perſonal eſtates, goods and effects to the value of ten thouſand pounds, or what other value, and whether the ſame was not much more than would pay all his juſt debts, legacies and funeral expences, and that they may alſo ſet forth a juſt and true account of all ſuch debts and ſums of money as were really due and owing,

owing, by and from their ſaid teſtator, at the time of his death, and to whom by name, and on what ſecurity or ſecurities, and how, and on what account ſuch debts were reſpectively contracted, and which of them now remain unpaid and unſatisfied; and that they may be compelled by a decree of this honourable court to pay your orator's ſaid legacy of three hundred pounds, and that the ſame may be placed out at intereſt for your orator's benefit, until your orator attains his age of twenty-one years, and that the ſaid three hundred pounds may then be paid him, and that, in the mean time, the intereſt thereof may be paid to your orator's ſaid father *J. W.* towards the maintenance of your orator; and that your orator may have ſuch further and other relief in the premiſſes as the nature of this caſe ſhall require, and as to your Lordſhip ſhall ſeem meet. May it pleaſe your Lordſhip, *&c.*

The anſwer to the foregoing bill, ſubmitting to pay the legacy under the indemnity of this court.

The joint and ſeveral anſwers of E. W. *and* W. W. *Gent. defendants, to the bill of complaint of* J. W. *an infant, by* J. W. *his father and next friend, complainant.*

THESE defendants now and at all times hereafter ſaving and reſerving to themſelves all manner of benefit and advantage of exception to the manifold errors and inſufficiencies in the complainant's ſaid bill contained, for anſwer thereto, or to ſo much thereof as theſe defendants are adviſed is material for them to make anſwer unto,

they anſwer and ſay, they do admit that *J. W.* in the bill named, their late father deceaſed, did duly make and execute ſuch laſt will and teſtament in writing of ſuch date and to ſuch purport and effect, and did thereby bequeath to the complainant *J. W.* ſuch legacy of three hundred pounds in the words in the bill for that purpoſe mentioned, or in words to the like purport or effect; And theſe defendants further anſwering ſay, they do admit that the ſaid teſtator *J. W.* did by ſuch will appoint theſe defendants *E. W.* and *W. W.* executors thereof, and that the ſaid teſtator died on or about the ſixth day of *March* 1742. without revoking or altering the ſaid will; and theſe defendants further anſwering ſay, that they do admit that they, theſe defendants, ſome time afterwards, *to wit*, about the month of *April* or *May* 1743. did duly prove the ſaid will in the eccleſiaſtical court of *York*, and did take upon themſelves the burthen of the execution thereof, and now have the probate of the ſaid will in their cuſtody ready to produce as this honourable court ſhall direct; and theſe defendants further anſwering do admit, that the ſaid complainant *J. W.* by his ſaid father and next friend did ſeveral times apply to them the ſaid defendants (ſince the ſaid legacy was payable,) to have the ſame paid or ſecured for the benefit of the ſaid complainant, which the defendants declined in regard the ſaid complainant is an infant, and therefore theſe defendants (as they were adviſed) could not be ſafe in making ſuch payments or in ſecuring the ſaid legacy, but by the order and direction, and under the ſanction of a decree of this honourable court; and theſe defendants further anſwering ſay, that by virtue of the ſaid will of the ſaid teſtator they did ſeiſe and poſſeſs themſelves of the real and perſonal eſtate, goods, chattels and effects of the ſaid teſtator, to

a con-

a conſiderable amount, and do admit that aſſets of their ſaid teſtator are come to their hands ſufficient to ſatisfy the complainant's ſaid legacy, and which aſſets they admit to be ſubject to the payment thereof, and are willing and deſirous, and do hereby offer to pay the ſame as this honourable court ſhall direct, being indemnified therein; and theſe defendants deny all unlawful combination or confederacy in the ſaid bill charged, without that, that there is any other matter or thing material or neceſſary for theſe defendants to make anſwer unto, and not herein or hereby well and ſufficiently anſwered unto, confeſſed or avoided, traverſed or denied, is true: All which, *&c.*

A bill in Chancery brought by an inteſtate's two daughters to call the widow to an account for the perſonal and real eſtate.

HUMBLY complaining, ſhew unto your Lordſhip, your oratrixes *M. D.* and *E. D.* of ——— in the county of ——— ſpinſters, daughters and coheirs of *W. D.* late of ——— aforeſaid, Eſq; your oratrixes being infants under the age of twenty-one years, *viz.* your oratrix *M.* of the age of ſeventeen years or thereabouts, your oratrix *E.* of the age of ſixteen years or thereabouts, by Sir *S. A.* of ——— in the pariſh of ———, knight, their next friend, that the ſaid *W. D.* your oratrix's late father, was in his life-time, and at the time of his death, ſeiſed in fee or of ſome other good eſtate of inheritance, of and in divers meſſuages, tenements and lands, with the appurtenances, in the city of ———, and alſo of and in the manor of ———, and of and in the meſſuages, lands, tenements

and hereditaments thereunto belonging or thereto adjoining, with the rents, members and appurtenances thereunto belonging, and alſo of and in ſeveral manors, and divers lands, tenements and hereditaments, with the appurtenances, in ——— and elſewhere in the kingdom of ——— of the yearly value in the whole of two thouſand pounds and upwards, or other conſiderable yearly value, and that the ſaid *W. D.* your oratrixes ſaid late father, was alſo in his life-time, and at the time of his death, poſſeſſed of, intereſted in, or intitled unto ſeveral goods and chattels real and perſonal, leaſes for years, and leaſes determinable on lives, ready monies, plate, houſhold goods, a great ſtock of cattle, horſes, implements of huſbandry, and other perſonal eſtate, amounting in the whole to the ſum of one thouſand pounds or other conſiderable value; And your oratrixes further ſhew, that your oratrixes ſaid late father being ſo ſeiſed and poſſeſſed of and in ſuch real and perſonal eſtate as aforeſaid, on or about the —— day of —— died inteſtate, leaving *D. D.* his widow and relict (your oratrixes mother) and your oratrixes his only daughters and coheirs, and of ſuch ages as aforeſaid; And your oratrixes further ſhew unto your Lordſhip, that on the death of your oratrixes ſaid late father, the ſaid meſſuages, lands, tenements and premiſſes, whereof he died ſeiſed as aforeſaid, deſcended, remained or came to your oratrixes as his daughters and coheirs, ſubject only to the right of dower or jointure of the ſaid *D. D.* your oratrixes ſaid mother, in and to the ſame during her life; and by virtue of the ſtatute for ſettling inteſtates eſtates, the clear perſonal eſtate of the ſaid inteſtate your oratrixes ſaid father, after debts and funeral charges paid and ſatisfied, ought to be diſtributed into three

three equal parts or ſhares, whereof the ſaid *D. D.* your oratrixes ſaid mother is intitled to one third, and the other two third parts of the ſaid perſonal eſtate ought to be equally divided between your oratrixes, being the only children of their ſaid father living at his death; And your oratrixes further ſhew, that on their ſaid father's death the ſaid *D. D.* your oratrixes ſaid mother, as guardian to your oratrixes, or otherwiſe in their right or on their behalf, entered and poſſeſſed herſelf of all and ſingular the ſaid real eſtate of your oratrixes ſaid father, and hath ever ſince his death received and took the rents, fines, iſſues and profits thereof, and alſo raiſed conſiderable ſums of money by and out of the ſaid coal-pits within the premiſſes; and ſhe the ſaid *D. D.* your oratrixes ſaid mother, alſo obtained letters of adminiſtration to be granted to her out of the prerogative court of *Canterbury* of the ſaid inteſtate your oratrixes ſaid father's perſonal eſtate, and by virtue thereof your oratrixes ſaid mother poſſeſſed herſelf of the ſaid inteſtate's goods, chattels and perſonal eſtate of ſuch great value as aforeſaid, or other great value, and hath ſold or diſpoſed of the ſame, and raiſed great ſums of money thereby, to two third parts or ſhares whereof your oratrixes are intitled as aforeſaid; and the ſaid *D. D.* your oratrixes ſaid mother, having ſo entered upon and poſſeſſed herſelf of your oratrixes ſaid father's real and perſonal eſtate as aforeſaid, and thereout and thereby raiſed and received great and conſiderable ſums of money, your oratrixes well hoped their ſaid mother would have come to a fair and juſt account with your oratrixes touching the ſame, and have paid and anſwered to your oratrixes what ſhould appear juſtly due to them in reſpect of the premiſſes, and that the

money ſo due and belonging to your oratrixes, as aforeſaid, ſhould have been from time to time put out and improved for your oratrixes beſt benefit and advantage, as the ſame ought in equity and juſtice to be: **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *D. D.* your oratrixes mother, combining and confederating herſelf with divers perſons unknown to your oratrixes, whoſe names when diſcovered your oratrixes pray may be made parties to this bill, with apt words to charge them; In order to defraud and defeat your oratrixes in the premiſſes, and having poſſeſſed herſelf of all the deeds and writings concerning your oratrixes ſaid father's eſtate, ſhe the ſaid *D. D.* your oratrixes ſaid mother (though in a dutiful manner requeſted thereto by your oratrixes) refuſes to come to any account with your oratrixes touching the rents, iſſues or profits of their ſaid father's real eſtate, or the particulars or values of the ſaid inteſtate's perſonal eſtate, or how ſhe the ſaid *D. D.* your oratrixes ſaid mother hath adminiſtred or diſpoſed of the ſame, and hath not as yet exhibited any inventory thereof (in the prerogative court of *Canterbury* as ſhe ought to have done) your oratrixes ſaid mother ſometimes pretending that your oratrixes being infants, ſhe need not account with them during their minorities, and that your oratrixes ſaid father was at his death indebted to divers perſons on mortgages, judgments, and other real ſecurities, and that ſhe your oratrixes ſaid mother hath paid conſiderable ſums of money in or towards the diſcharge or ſatisfaction thereof, and that ſhe is intitled to her dower out of your oratrixes ſaid father's real eſtate, or otherwiſe to a jointure on the ſame or ſome part thereof, for payment of a yearly ſum of money to her during her life, or to

ſome

ſome ſuch effect, and yet refuſes to diſcover the ſame; and your oratrixes ſaid mother alſo pretends that your oratrixes ſaid father's perſonal eſtate was not conſiderable, or not of ſuch real value as aforeſaid, and that your oratrixes ſaid father was at his death indebted on bonds, ſecurities, book-debts, debts by ſimple contract and otherwiſe, to ſeveral perſons in conſiderable ſums of money, in or towards ſatisfaction of which ſhe hath applied the ſame, and that if any ſurplus money did or ſhould remain in her hands on her accounts due to your oratrixes in reſpect of their ſaid father's real and perſonal eſtates, that ſhe cannot take upon her to put out ſuch monies or any part thereof at intereſt, or otherwiſe improve the ſame, without the direction and decree of this honourable court for ſo doing; and your oratrixes ſaid mother refuſes to come to an account with your oratrixes touching the premiſſes, or pay and diſpoſe the monies due to your oratrixes thereon for your oratrixes benefit and advantage, as ſhe ought in juſtice and equity to do. All which doings of the ſaid *D. D. &c.* In tender, *&c.* **To the end** therefore that the ſaid *D. D.* your oratrixes ſaid mother may true and perfect anſwer make to all and ſingular the premiſſes as fully as if the ſame were herein again particularly repeated and interrogated, and particularly may ſet forth and diſcover what manors, meſſuages, lands, tenements or hereditaments your oratrixes ſaid father, or any in truſt for him, was ſeiſed or poſſeſſed of at the death of your oratrixes ſaid father, and where the ſame lie, and may ſet forth a true rental or other yearly value thereof, and what rents, iſſues or profits of the ſame, ſhe, or any perſon or perſons by her order, privity or knowledge, of or for her uſe, have or hath had,

received or taken ſince the death of your oratrixes ſaid father; and may alſo ſet forth a particular account when and of whom ſhe received the ſame, and what ſum or ſums of money ſhe hath really and *bona fide* paid, diſburſed or allowed out of or in reſpect of your oratrixes ſaid father's ſaid eſtate, or any and what parts thereof, and the times when, and the perſons to whom, and for what and on what account ſhe paid and allowed the ſame; and may alſo ſet forth and diſcover what eſtate, right, title or intereſt ſhe your oratrixes ſaid mother hath or pretends to claim in or to your oratrixes ſaid father's eſtate, or any and what parts thereof, either for or upon account of her dower, jointure or otherwiſe, and by what deed, ſettlement or conveyance ſhe hath or claims any jointure or other proviſion (if any ſuch there be) out of the ſaid eſtate and premiſſes, and when and upon what conſideration really and *bona fide* ſuch ſettlement or conveyance (if any ſuch there be) was made; and alſo what deeds, evidences and writings your oratrixes ſaid mother hath in her cuſtody or power concerning the ſaid eſtate and premiſſes, and may diſcover and produce the ſame as this honourable court ſhall think fit and direct; and that your oratrixes ſaid mother may alſo ſet forth what perſonal eſtate your oratrixes ſaid father died poſſeſſed of, intereſted in, or intitled unto, and may ſet forth a true and perfect inventory or account thereof, and the fair and true values of the ſame, and what part thereof hath come to her hands, power or poſſeſſion, and the particulars, kinds, and true values of ſuch parts of the ſame as hath come to her hands, poſſeſſion, power, privity or knowledge, or of any perſon or perſons in truſt for her, and how ſhe hath adminiſtred and diſpoſed of the ſame, and what

what parts thereof ſhe hath ſold, and to whom, and for how much, or at what values, and if the ſame were the full and true values thereof reſpectively, and what ſum or ſums of money your oratrixes ſaid mother hath at any time or times, and when, and of whom had or received, or raiſed thereby, and how ſhe hath paid and applied the ſame, or any and what parts thereof, and when and to whom, and for what and upon what account, and when ſuch payments as ſhe hath made out of, or in reſpect of the ſaid perſonal eſtate for debts due from the inteſtate, or otherwiſe, were all and every part thereof really and *bona fide* made by your oratrixes ſaid mother, and whether the monies by her brought to her account, to be paid out of or on account of the ſaid perſonal eſtate were really and *bona fide* paid by her accordingly, and what part of the ſaid perſonal eſtate is yet ſtanding out and undiſpoſed of, and the particulars, kinds, and true values thereof; and that your oratrixes ſaid mother may come to a fair and juſt account with your oratrixes as well touching their ſaid father's real and perſonal eſtate, and what is due and of right belonging to your oratrixes out of the ſame reſpectively, and that the clear ſurplus of the monies on ſuch accounts due and belonging to your oratrixes, may be applied and diſpoſed of for your oratrixes benefit and advantage, by putting out the ſame at intereſt, or otherwiſe improved as this honourable court ſhall think fit, and your oratrixes be relieved in all and ſingular the premiſſes according to equity and good conſcience. May it, *&c.*

A bill to diſcover a title, and ſet aſide a recovery and will ſuffered and made by a lunatick, by one coheireſs againſt another, and that a mortgage made by the defendant may affect her part only, and to be relieved with regard to a partnerſhip debt, the partnerſhip being diſſolved.

To the Right Honourable, &c.

HUMBLY complaining ſhew unto your Lordſhip your orator and oratrix *J. S.* of the pariſh of ——— in the county of ———, and *E.* his wife, which ſaid *E.* was one of the daughters and coheirs of *C. W.* late of ——— in the county of ——— widow deceaſed, and likewiſe one of the ſiſters and coheirs of *J. W.* late of ——— aforeſaid, gentleman, deceaſed, That the ſaid *C. W.* being ſeiſed and poſſeſſed of divers lands, tenements and hereditaments in fee-ſimple, ſituate, lying and being at ——— aforeſaid, of the yearly value of ———, or thereabouts; and being minded to make ſome proviſion for her family, ſhe by ſome deed or inſtrument duly executed by her, conveyed and ſettled the ſame in the manner following, *to wit*, To herſelf for life without impeachment of waſte, and from and after her deceaſe, to the ſaid *J.* her eldeſt ſon, and the heirs male of his body; and from and after his deceaſe without iſſue male, to *T. W.* her other ſon, and the heirs male of his body, and for default of iſſue male of the ſaid *T.* then to her own right heirs, as in and by the ſaid deed or inſtrument of ſettlement, had your orator and oratrix the ſame to produce, and to which for greater certainty therein your orator and oratrix

trix crave leave to refer, doth more fully and at large appear; And your orator and oratrix further ſhew unto your Lordſhip, that ſome ſhort time after ſhe had executed the ſaid ſettlement as aforeſaid, *to wit*, in the year 1711. ſhe the ſaid *C. W.* departed this life leaving iſſue the ſaid *J.* and *T. W.* her ſaid two ſons and five daughters, namely, *A. M.* your oratrix *E. C.* and *S.* and that the ſaid *J.* being tenant in tail of the ſaid premiſſes, he thereupon entered upon the ſame, and took poſſeſſion thereof, and held and enjoyed the ſame home to the time of his death; And your orator and oratrix further ſhew unto your Lordſhip, that the ſaid *T. W.* and *S. W.* reſpectively died unmarried in the life-time of the ſaid *J.* and that the ſaid *J.* departed this life on or about the twenty-ſecond day of *November* 1739. unmarried and without any iſſue of his body, and that he did no act in his life-time whereby the ſaid eſtate-tail became docked, or the remainders in the ſaid ſettlement barred, and that by means thereof the ſaid premiſſes on his death by the ſaid ſettlement became veſted in the ſaid *A. M.* your oratrix and *C.* the four ſurviving daughters of the ſaid *C. W.* as her right heirs, and ought to be held and enjoyed in copartnerſhip by them; And your orator and oratrix further ſhew unto your Lordſhip, that immediately upon the death of the ſaid *J. W.* the ſaid *A.* your oratrix's ſaid eldeſt ſiſter, under pretence that ſhe was thereunto privileged by priority of birth, entered into and took poſſeſſion of the ſaid premiſſes, and hath enjoyed the ſame, and taken the rents and profits thereof to her own uſe ever ſince; And your orator and oratrix further ſhew unto your Lordſhip, that before your orator's intermarriage with the ſaid *E.* his ſaid wife, a partnerſhip in trade had been entered into and carried on for ſe-

ven

ven years by and between the ſaid *A.* and his ſaid wife, that during the ſaid partnerſhip the ſum of —— was borrowed of Mrs. *S. W.* of —— in the county of ——, a defendant herein after named on the ſaid partnerſhip account; That upon his concluding the treaty of marriage with the ſaid *E.* the ſaid *A.* agreed that ſhe would retain the ſaid partnerſhip effects to her own uſe, and in conſideration thereof would take the payment of the ſaid ——— to the ſaid Mrs. *W.* on herſelf, and would alone become reſponſible to her for the ſame, and that in conſequence thereof, upon their ſaid marriage an inſtrument or writing was executed between them for diſcharging the ſaid partnerſhip, and for the ſaid *A.*'s indemnifying your orator from the ſaid ——— ſo borrowed of the ſaid Mrs. *W.* as aforeſaid; and the ſaid *A.* having fraudulently got the ſaid inſtrument or writing into her cuſtody or power, refuſes to produce the ſame, intending by her concealment thereof, to retain the ſaid partnerſhip effects to her own uſe, and to throw the burthen of the ſaid debt upon your orator; And your orator and oratrix charge, that on the ſaid diſcharge or diſſolution of the ſaid partnerſhip between the ſaid *A.* and your oratrix, the ſaid partners were poſſeſſed of a very conſiderable ſtock in trade, and divers conſiderable debts were ſtanding out and owing from ſeveral perſons to the ſaid partnerſhip, amounting to a very great value, all or the greateſt part whereof the ſaid *A.* hath either cauſed to be got in for her uſe, or hath perſonally received the ſame; and your orator being intitled in the right of his ſaid wife to one fourth or quarter part of the ſaid premiſſes, and alſo to a moiety of the ſaid partnerſhip effects as aforeſaid, he hath often applied to the ſaid *A. W.* and in a friendly manner intreated her to let him into the poſſeſſion thereof, and to account

account with him for the rents and profits thereof from the death of the ſaid *J. W.* and to pay the ſaid debt ſo due to the ſaid Mrs. *W.* as aforeſaid, or otherwiſe to deliver up the ſaid inſtrument or writing to your orator, that he may thereby be inabled to do himſelf right in caſe he ſhould be ſued for the ſame, or to account with him for a moiety of the ſaid partnerſhip effects; and your orator well hoped, that the ſaid *A.* knowing that your orator was well intitled thereunto as aforeſaid, would have complied with your orator's requeſt, as in juſtice and equity ſhe ought to have done: **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *A. W.* combining and confederating herſelf to and with the ſaid *S. W.* and to and with diverſe other perſons, at preſent unknown to your orator and oratrix, whoſe names, when diſcovered, your orator and oratrix humbly pray may be inſerted in this their bill of complaint, with apt words to charge them as parties hereunto, now to defeat your orator and oratrix of the ſaid fourth or quarter part of the ſaid premiſſes ſo come to your oratrix as aforeſaid; and to load your orator with the ſaid partnerſhip debt, ſo due and owing to the ſaid *S. W.* ſhe the ſaid *A.* pretends, and gives out in ſpeeches, that ſhe is well intitled to the whole premiſſes, by virtue of ſome deviſe or general words in the will of her ſaid mother, and that her ſaid mother *C. W.* never made any ſuch ſettlement thereof, as is herein before ſet forth; at other times ſhe admits, that the ſaid *C. W.* did duly execute ſuch ſettlement; and that the ſaid *J.* upon her death, entered upon the ſaid premiſſes, and enjoyed the ſame as tenant in tail thereof, and that he, by fine and recovery levied and ſuffered by him, docked the ſaid entail, and barred the ſaid remainders, and by indentures leading the reſpective uſes thereof had declared

declared the ſame to be to the uſe of himſelf and his heirs for ever, and that being by means thereof ſeiſed of an abſolute eſtate in fee-ſimple in the ſaid premiſſes, he, by his laſt will and teſtament in writing, duly executed, and bearing date on or about the twenty-ſixth day of *Auguſt* 1725. gave and bequeathed unto the ſaid *A.* the ſum of and to all his other ſiſters the ſum of a-piece, and to one Mrs. *C. S.* the ſum of and deviſed the remainder of his eſtate, whether real or perſonal, unto the ſaid *A.* and her heirs for ever, and that ſhe therefore claims the ſaid whole premiſſes, under the will of her ſaid brother *J. W.* who ſhe inſiſts had full power to diſpoſe thereof as he thought proper; whereas your orator and oratrix charge, and doubt not but they ſhall be able to prove the ſame to be true, that the ſaid *J. W.* was utterly incapable of levying any fine, or ſuffering any recovery in order to dock the ſaid intail, and bar the ſaid remainders ſo limited by the ſaid ſettlement as aforeſaid, or of making any will to diſpoſe of his real eſtate, if any ſuch he was intitled to, other than as aforeſaid; he the ſaid *J. W.* having been a lunatick without any lucid interval from his age of twelve years and continued ſo to the time of his death; and your orator and oratrix charge, that if it ſhall appear that the ſaid *J. W.* had an eſtate in fee-ſimple in the ſaid premiſſes, which your orator and oratrix by no means admit, yet that for the reaſon laſt mentioned, he could by no means lawfully diſpoſe thereof, either by will or otherwiſe, but the ſame are deſcended and come to his ſaid four ſiſters *A. M. E.* and *C.* as his heirs at law; and that your orator in the right of his ſaid wife is thereby become intitled unto one fourth or quarter part thereof, and ought to be put in poſſeſſion of the ſame, and to have an account of the rents and profits thereof from the

the death of the ſaid *J. W.* her ſaid brother; at other times ſhe the ſaid *A.* denies that any ſum of money whatſoever was borrowed of the ſaid *S. W.* by her and your oratrix *E.* on the ſaid partnerſhip account, or that any inſtrument or writing was executed by her upon your orator and oratrix's ſaid intermarriage, to indemnify your orator therefrom, but inſiſts that the ſaid ſum of ——— was the ſole and ſeparate debt of your oratrix *E.* and borrowed for her own uſe independent of the ſaid partnerſhip, and being in poſſeſſion of the ſaid inſtrument or writing, ſets your orator at defiance as to any remedy he can have againſt her for the ſame, or any part thereof; and the ſaid *S. W.* knowing that the ſaid *A.* conceals and ſecretes the ſaid inſtrument or writing, and confederating with her how to oppreſs your orator therein, threatens to ſue your orator for the ſame, and to compel him to make payment thereof; and the ſaid *S. W.* admits the ſame to be the ſole and proper debt of the ſaid *A.* although your oratrix became a joint ſecurity with her for the ſame, or otherwiſe that the ſame was borrowed on the ſaid partnerſhip account, and that ſhe by virtue of the ſaid agreement between her and your orator, and for the conſiderations aforeſaid, had taken the ſame upon herſelf, and hath often acknowledged that ſhe knew the circumſtances of the ſaid *A.* to be very good, and that ſhe ſhould rely ſingly upon her for the payment of the ſaid money, or to that or the like effect; at other times the ſaid *A.* pretends, that the ſaid ſtock and effects of the ſaid partnerſhip was very trifling and inconſiderable at the time that the ſaid partnerſhip was ſo diſcharged or diſſolved as aforeſaid, and not an equivalent for her diſcharging or indemnifying your orator, from paying his ſhare and proportion of the ſaid debt, but denies that your orator in right of his ſaid

wife,

wife, is intitled to a moiety or any other part thereof; whereas your orator and oratrix ſtrictly charge, that the ſaid partnerſhip effects were of a conſiderable value, and the ſaid *A.* very well knew the ſaid agreement to be a very beneficial one on her part, and hath often promiſed your orator and oratrix to perform the ſame, or to account with your orator for a moiety of the ſaid partnerſhip effects; at other times the ſaid *S. W.* pretends and inſiſts, that ſhe has ſome mortgage or other incumbrance on the ſaid premiſſes at——aforeſaid, but refuſes to diſcover to your orator and oratrix by whom the ſame was made or done, and for what ſum or ſums of money really and *bona fide* advanced and lent by her thereon; whereas your orator and oratrix charge, that if any ſuch mortgage ſhall appear to be made or done, the ſame was made and done by the ſaid *A.* ſolely ſince the death of the ſaid *J.* and can only affect her intereſt in the ſaid premiſſes. All which actings, doings and pretences of the ſaid confederates are contrary to equity and good conſcience, and tend moſt apparently to your orator and oratrix's great injury and wrong: **In tender conſideration** whereof, and foraſmuch as your orator and oratrix are altogether remedileſs in the ſaid premiſſes at common law, and cannot be relieved therein but by the favourable aid and aſſiſtance of a court of equity, where matters of fraud and of this nature are properly to be diſcovered and inquired into, and the rather, for that your orator and oratrix's witneſſes who would prove the truth of the ſaid premiſſes, are either dead or gone into parts remote and beyond the ſeas, and unknown to your orator and oratrix, by means whereof your orator and oratrix are deprived of the benefit of their teſtimonies: **To the end** therefore, that the ſaid *A. W.* and *S. W.* and the reſt of the confederates, when

when diſcovered, may true, diſtinct and perfect anſwer reſpectively make to all and ſingular the matters and things herein and hereby charged, and that in as full and ample a manner as if the ſame were here again particularly repeated and interrogated; and that the ſaid *A. W.* in particular may ſet forth and diſcover whether the ſaid *C. W.* your oratrix's ſaid late mother, was not ſeiſed in fee-ſimple, or how otherwiſe, of the ſaid premiſſes at —— aforeſaid of the yearly value of —— or thereabouts, or of what other yearly value, and whether ſhe did not make ſuch ſettlement thereof as is herein before ſet forth, or any other and what ſettlement thereof, and of what date the ſame is, and of what kind and nature, and between what parties and by whom executed, and what are the names of the ſubſcribing witneſſes thereto, and in whoſe cuſtody or power the ſame now is or late was, and when and whether the ſaid *C. W.* is not ſince dead, and when ſhe died, and what iſſue ſhe left behind her at the time of her death, and whether immediately upon her death the ſaid *J. W.* her eldeſt ſon as tenant in tail under the ſaid ſettlement, or how otherwiſe, did not enter upon the ſaid premiſſes, or any and what part thereof, and take poſſeſſion thereof, and hold and enjoy the ſame to the time of his death; and whether the ſaid *T. W.* and *S. W.* did not reſpectively die in the life-time of the ſaid *J.* unmarried, and whether the ſaid *J.* did not, at or about his age of twelve years, or at or about any other and what age, become a lunatick without any lucid interval, and whether he was at any time, and when afterwards, capable of levying any fine, or ſuffering any recovery to dock the ſaid intail and bar the ſaid remainders in the ſaid ſettlement, and when and whether he was of ſound mind and memory at the time when he made and executed his

ſaid will, and how long he had been ſo before the making and execution thereof, and whether he continued to be ſo any time afterwards and how long, and by whoſe advice was the ſame made, and where, at what place, and about what time was ſuch will made and executed, and who drew or prepared ſuch will, and where did ſuch perſon who drew or prepared the ſaid will, and the perſons that were witneſſes thereto at the time of drawing or preparing the ſaid *J. W.*'s will and execution thereof, reſpectively live or reſide, and where do ſuch perſons now live, lodge, reſide, or may be met with or heard of, and whether the ſaid *J. W.* is not ſince dead unmarried, and without iſſue, and whether the ſaid *A. M.* your oratrix *E.* and *C.* are not the only daughters and right heirs of the ſaid *C. W.* and the only ſiſters and heirs at law of the ſaid *J. W.* and whether upon the death of the ſaid *J.* and how long after, or when otherwiſe, ſhe the ſaid *A.* did not enter upon the ſaid premiſſes, and take poſſeſſion thereof, and receive the rents and profits thereof, and why, and whether ſhe doth not now continue in the reception thereof, and what is the clear yearly produce thereof, and whether your orator in the right of his ſaid wife, is not now become intitled to one full fourth or quarter part of the ſaid premiſſes, and to a full fourth or quarter part of the rents and profits thereof from the death of the ſaid *J. W.* or how otherwiſe, and whether previous to your orator's ſaid intermarriage with his ſaid wife, and how long, a partnerſhip in trade was not entred into and carried on by and between the ſaid *A.* and your orator's ſaid wife, and during the ſaid partnerſhip the ſaid ſum of——was not borrowed of the ſaid other defendant Mrs. *S. W.* on the ſaid partnerſhip account, or how otherwiſe, and by whom and why, whether upon the ſaid marriage being

being concluded between your orator and his wife, it was not agreed that the said *A.* should retain the said whole partnership effects to her own use, and that in consideration thereof she should take the payment of the said sum of —— on herself, and alone become responsible to the said *S. W.* for the same, and whether in consequence thereof, an instrument or writing was not executed by and between them for discharging the said partnership, and for the said *A.*'s indemnifying your orator from the said sum of ——, or to what other purport and effect, and of what date, and in whose custody or power the same now is, or late was, and when and how long it was since she last saw the same, and whether she doth not conceal and secrete the same, and why, and whether at the time of the said discharge or dissolution of the said partnership as aforesaid the said partners were not possessed of a very considerable stock in trade, and of what the same particularly consisted, and whether divers debts were not standing out and owing from several persons to the said partnership, and whether she hath not received, or caused to be received, all, or the greatest part thereof, and to what value the said partnership effects in the whole amounted unto; and that the said *S. W.* may set forth and discover when and by whom the said sum of——was borrowed of her, and whether the same was not the sole and proper debt of the said *A. W.* although your orator became a joint security with her for the same; and whether, if the same was borrowed on the said partnership account, she hath not since acknowledged, and to whom, that she knew of the said instrument or writing's being executed by and between the said *A.* and your orator, and that for the consideration herein before mentioned the said *A.* had taken the same upon herself, and that she knew the said *A.*'s

circumſtances to be very good, and ſhould rely ſingly upon her for the payment of the ſaid debt, or to that or the like effect; and whether ſhe hath not ſince threatned to ſue your orator for the ſame, and to compel him to make payment thereof, and why and whether ſhe hath any mortgage, or other and what incumbrance on the ſaid premiſſes at ——— aforeſaid, and by whom the ſame was made or done, and when and for what ſum or ſums of money really and *bona fide* advanced and lent by her, and to whom; and that the ſaid *A.* may produce the ſaid ſettlement, or ſet forth the ſame *in hæc verba* in her anſwer hereunto, and that the ſaid will of the ſaid *J. W.* may be declared to be null and void, and abſolutely ſet aſide as againſt your orator and oratrix, and your orator be put into the poſſeſſion of one full fourth or quarter part of the ſaid premiſſes in right of his ſaid wife, and that the ſaid *A.* may account with your orator and oratrix, and pay them one full fourth or quarter part of the rents and profits of the ſaid premiſſes ſo received by her as aforeſaid, and may likewiſe produce and deliver up to your orator the ſaid inſtrument and writing ſo entered into between them as aforeſaid, and further indemnify and ſave harmleſs your orator from the ſaid debt of ——— ſo owing to the ſaid *S. W.* as aforeſaid, or may otherwiſe account with your orator for a moiety, of the ſaid partnerſhip effects, and pay and deliver over the ſame to your orator, and that the ſaid mortgage or other incumbrance ſo made or done by the ſaid *A. W.* to the ſaid *S. W.* may be declared to affect the intereſt only of the ſaid *A.* in the ſaid premiſſes, and that the ſaid *S. W.* may be reſtrained from proceeding at law againſt your orator for recovery of her ſaid debt by injunction of this honourable court, and that your orator and

oratrix may be further and otherwiſe relieved in the ſaid premiſſes according to equity and good conſcience, and as the nature and circumſtances of their caſe ſhall require. May it pleaſe your Lordſhip, *&c.*

A bill in order to eſtabliſh the cuſtom of a manor.

To the Right Honourable, &c.

HUMBLY complaining, ſhew unto your Lordſhip, your orator and oratrixes *W. W.* of, *&c.* in the county of ———, Eſq; and the honourable *C. W.* his wife, and the honourable *M. G.* ſpinſter, that your oratrixes *C. W.* and *M. G.* are aunts and coheirs at law of the Right Honourable *C.* late Lord *P.* deceaſed, who at the time of his death (which happened on or about the twenty-ſecond day of *February* which was in the year 1738.) was ſeiſed in fee, of and in the barony of ——— and the manor of ——— within the county of ———, and the rights, members and appurtenances belonging thereto, that upon the deceaſe of the ſaid late Lord *P.* (who died without iſſue male) the ſaid premiſſes deſcended to, and became veſted in your oratrixes in fee as aunts and coheirs at law of the ſaid Lord *P.* And your orator *W. W.* in right of your oratrix *C.* his wife, and your oratrix *M. G.* now are, and ever ſince the deceaſe of the ſaid late Lord *P.* have been ſeiſed in fee, and in actual poſſeſſion of the ſaid barony and manor, and all the rights, members and appurtenances belonging to the ſame; and your orator and oratrixes further ſhew, that there are, and time out of mind have been, divers antient cuſtomary meſſuages, lands and tenements within and parcel of the ſaid ma-

nors, and held of the ſame, and deſcendible from anceſtor to heir, according to the cuſtom of the ſaid manor, and holden thereof under the payment to the Lord or Lady, for the time being, of the ſaid manor, of certain antient yearly rents for the ſaid cuſtomary meſſuages and tenements reſpectively, and of a fine upon every grant thereof, made by the Lord or Lady for the time being, of the ſaid manor, to the tenants thereof reſpectively, and under payment of certain heriots, and doing ſuit and ſervice at the courts of the ſaid manor, according to the cuſtom thereof; and your orator and oratrixes further ſhew, that the ſaid cuſtomary meſſuages, lands and tenements reſpectively, are, and time out of mind, by the uſage and cuſtom of the ſaid manor, have been grantable and granted by the Lord or Lady of the ſaid manor for the time being, by deed executed by him or her, and by admittance thereupon made or granted by ſuch Lord or Lady, or his or her ſteward for the time being, of the ſaid manor; and more particularly your orator and oratrixes charge, that amongſt other cuſtomary tenements, parcel and held of the ſaid manor as aforeſaid, there are, and time out of mind have been an antient meſſuage, and two hundred acres of cuſtomary land called *K.* ſituate and lying within the ſaid manor, which are, and time out of mind have been a cuſtomary meſſuage, and lands, and parcel and holden of the ſaid manor as aforeſaid, according to the cuſtom thereof, and granted and grantable as aforeſaid; and that the ſame are now held by *T. H.* of *D.* in the county of *C.* and *T.* his wife, in her right, by and under ſuch cuſtomary deed and admittance as aforeſaid, according to the antient and laudable cuſtom of tenant-right within the ſaid manor; And your orator and oratrixes expreſly charge, that the ſaid deed

deed and admittance now are in the cuſtody or power of the ſaid *T. H.* and *T.* his wife, or one of them; and that by the antient uſage and cuſtom, time out of mind uſed and obtained within the ſaid manor, no cuſtomary tenant of the ſaid cuſtomary eſtate called *K.* or of any other of the cuſtomary lands, parcel and held of the ſaid manor as aforeſaid, has or have any right or title to fell or cut down any timber growing thereon, ſave and except for the neceſſary repairs of their reſpective cuſtomary tenements, and for neceſſary botes to be uſed upon their reſpective cuſtomary tenements; and that only after ſuch timber has been aſſigned and ſet out for that purpoſe by the bailiff or agent for the time being, of the then Lord or Lady of the ſaid manor; and that agreeable to the ſaid laſt mentioned cuſtom, and in confirmation thereof by the ſaid deed or indenture of the ſaid *K.* under which and the ſaid admittance the ſame is now held as aforeſaid, it is covenanted by the tenant or grantee therein named, for himſelf, his heirs and aſſigns, to and with the Lord of the ſaid manor, his heirs and aſſigns, that ſuch grantee, his heirs or aſſigns ſhould not, nor would fall or cut down any timber on the ſaid cuſtomary lands called *K.* ſo granted to him as aforeſaid, or any part thereof, ſave for ſuch neceſſary repairs and botes as aforeſaid, by and after ſuch aſſignment thereof to be made to him as aforeſaid, as by the ſaid deed and admittance, when produced to this honourable court, and to which your orator and oratrixes crave leave to refer, relation being thereunto reſpectively had, may more fully appear: And your orator and oratrixes further ſhew, that there now is a great quantity of timber, and till lately, as herein after is mentioned, was a much greater quantity thereof growing or ſtanding on the ſaid cuſtomary lands called

K. and that all ſuch timber was and is reſpectively the property of and belongs to your orator and oratrixes as parcel of the freehold and inheritance of the ſaid land whereon ſuch timber grew or ſtood, or now grows, the freehold and fee of which lands are veſted in your orator and oratrixes, as Lord and Ladies of the ſaid manor aforeſaid: **But nevertheleſs ſo it is,** may it pleaſe your Lordſhip, that the ſaid *T. H.* and *T.* his wife having entered into combination and confederacy with divers other perſons, as yet unknown to your orator and oratrixes, whoſe names when diſcovered, your orator and oratrixes pray leave to inſert in this their bill of complaint, with apt matter to charge them and every of them, as defendants hereto; with intent to injure your orator and oratrixes, and convert all the ſaid timber to the uſe of the ſaid *T. H.* and *T.* his wife; he the ſaid *T. H.* did, in or about the month of *July* laſt, cauſe fifty-ſix oak timber trees of conſiderable value to be felled and cut down in and upon the ſaid cuſtomary lands called *K.* without any licence or aſſignment by or from your orator or oratrixes, or by any bailiff or agent of theirs, or of any of them for ſo doing; whereas your orator and oratrixes expreſly charge, that by the cuſtom of the ſaid manor, and alſo by the ſaid deed or indenture under which the ſaid cuſtomary lands called *K.* are now held as aforeſaid, the tenants and occupiers of the ſaid cuſtomary lands called *K.* are expreſly reſtrained from cutting, felling or taking any timber or wood in or upon the ſame, except for neceſſary repairs, and bores to be aſſigned them reſpectively as aforeſaid; and your orator and oratrixes alſo charge, that the ſaid timber and wood ſo cut down by the ſaid *T. H.* or his order as aforeſaid, was not, nor is neceſſary to be uſed in or for any repairs of or about the

the houſes and buildings, or any of them, on the ſaid cuſtomary tenement called *K.* or for neceſſary botes; and that, at the time the ſaid timber or wood was ſo cut down as aforeſaid, there was a conſiderable quantity of timber and wood lying upon the ſaid lands and eſtate called *K.* which had been cut down by the ſaid *T. H.* and *T.* his wife, or one of them, or their or one of their order, about three or four years ago, and which was more than ſufficient for all the repairs of the buildings upon the ſaid premiſſes, and for neceſſary botes to be uſed upon the ſame; and that there was not then, nor now is any occaſion, on account of any repairs of or about the ſaid premiſſes called *K.* or for neceſſary botes to be uſed upon the ſame premiſſes, to cut down any more or other timber or wood upon the ſame; notwithſtanding which, the ſaid *T. H.* not only refuſes to make your orator and oratrixes ſatisfaction for the ſaid timber and wood ſo cut down by him as aforeſaid (altho' ſeveral times applied to for that purpoſe;) and your orator and oratrixes have offered, and do hereby offer to waive all penalties and forfeitures for cutting the ſame; but the ſaid *T. H.* and *T.* his wife give out, that they will cut down all ſuch other timber and wood upon the ſaid premiſſes as they ſhall think fit. **In conſideration whereof,** and foraſmuch as your orator and oratrixes are remedileſs in the premiſſes, and cannot reſtrain the ſaid *T. H.* and *T.* his wife from committing farther waſte or ſpoils in the timber growing on the ſaid lands and eſtate called *K.* nor can have a diſcovery of the quantities and value of the ſaid timber ſo cut down as aforeſaid, and compel the ſaid *T. H.* to make your orator and oratrixes ſatisfaction for the ſame, without the aid and aſſiſtance of this honourable court; **To the end therefore** that the ſaid *T.*

H.

H. and *T.* his wife may, and their confederates as diſcovered, upon their reſpective oaths, full, true and perfect anſwer make (to the beſt of their reſpective knowledge, information and belief,) to all and ſingular the matters and things herein before charged, as fully and particularly as if the ſame, and every of them, were here particularly repeated and they thereunto interrogated; and more eſpecially that the ſaid *T. H.* and *T.* his wife may ſet forth, whether your orator and oratrixes are not Lord and Ladies or owners of the ſaid barony of *L.* and of the ſaid manor of *N.* herein beforementioned, and whether, as ſuch, they are not ſeiſed in fee or otherwiſe, and how, of and intitled to the freehold and ſoil of all the ſaid cuſtomary lands called *K.* and all timber and wood ſtanding or growing thereon, and whether the ſame are not now holden by the ſaid *T. H.* and *T.* his wife, in her right or otherwiſe; and how, by and under ſuch deed and admittance as herein before mentioned, or by or under what other right or title, and whether ſuch covenant or reſtriction concerning the cutting or felling of timber and wood as herein before is mentioned, is not contained therein, and whether they have any, and what right to cut down any, and what timber or wood, in or upon the ſaid lands ſo held by them, except for the neceſſary repairs of the houſes and buildings thereon, and for neceſſary botes, and that by and with the licence and aſſignment of the Lord or Lords of the ſaid manor, or their bailiff or agent for the time being; and whether there is not a conſiderable, or ſome and what quantity of timber ſtanding and growing upon the ſaid cuſtomary eſtate called *K.* and of what value the ſame is, and whether the ſole property thereof is not in your orator and oratrixes as aforeſaid, and whether he the ſaid *T. H.* and

and *T.* his wife, has or have, or pretend to have any and what right or title thereto, or to any, and what part thereof; and that they may ſet forth the deed and admittance, or other and what title they hold the ſaid lands and eſtate called *K.* and whether the perſon to whom the ſame was granted, was not by ſuch deed reſtrained from cutting or felling any timber upon the ſaid cuſtomary eſtate (ſave as aforeſaid;) and that the ſaid *T. H.* and *T.* his wife may ſet forth, whether they, or one and which of them, did not in or about the month of *July* laſt, or at ſome, and what other time or times, cauſe fifty-ſix oak-trees, or ſome other, and what number of oak or other trees, and of how many years growth, to be cut down and fallen in and upon the ſaid lands called *K.* and whether the ſame were not ſo cut or fallen without the licence or aſſignment of your orator and oratrixes, or any agent or bailiff of theirs, and without any aſſignment of any ſuch bailiff or agent; and by what right, title, power or authority the ſame were ſo cut down or fallen; and that they may ſet forth the reſpective dimenſions and values of each and every of the ſaid trees ſo cut down by them or either of them, or by their or either of their order as aforeſaid; and that he the ſaid *T. H.* may account and make ſatisfaction to your orator and oratrixes for the ſame; and that the ſaid *T. H.* and *T.* his wife, may be reſtrained by the order or injunction of this honourable court from felling or cutting down any timber or wood for the time to come in or upon the ſaid lands held by them of the ſaid manor as aforeſaid, without the aſſignment of your orator and oratrixes, or their bailiff or agent; and that your orator and oratrixes may have ſuch further and other relief in the premiſſes, as the nature of their caſe requires, and as ſhall be agreeable to equity

equity and good conſcience. May it pleaſe your Lordſhip, &c.

A bill to open an account ſettled by the inteſtate, for fraud and dureſs.

To the Right Honourable, &c.

HUMBLY complaining ſhew unto your Lordſhip your orators *C. C.* only ſon and ſole heir of *C. S.* late of——in ——— merchant, deceaſed, and *J. R.* of *B.* in the county of —— Eſq; adminiſtrator of all and every the goods and chattels, rights and credits which were the goods and chattels, rights and credits of the ſaid *C. S.* at the time of his death. That ſome time in the year of our Lord——*T. C.* of *London*, merchant, and *L. M.* of the ſame place, merchant, both trading to —— in ——— and being willing and deſirous to unite, did come to a treaty with each other to unite their ſtock in the ſaid trade to the ſaid———and other parts; and finding it neceſſary to ſtate both their accounts, in order to the adjuſting the terms of the then intended union, they did jointly and ſeverally appoint and authoriſe their agents to examine and ſtate the accounts of the ſeveral merchants in——with whom the ſaid *T. C.* and *L. M.* or either of them had had any dealings; and thereupon the ſaid *T. C.* and *L. M.* did duly and ſufficiently authoriſe *J. G. S. C. E. B.* and *J. R.* concerned as agents for the ſaid *T. C.* and *L. M.* reſiding at——aforeſaid, to ſtate and ſettle the accounts then depending between the ſaid *T. C.* and *L. M.* and the ſaid *C. S.* And the ſaid *T. C.* and *L. M.* by their ſaid agents duly authoriſed as aforeſaid, ſome time in the ſaid year, came to an account with the ſaid *C. S.* touching all

all dealings that had been between them, as well concerning money borrowed and received by the ſaid *T. C.* and *L. M.* or either of them, of and from the ſaid *C. S.* and goods and merchandizes of his that had been ſold and delivered by him to them or one of them, as concerning buſineſs done by him for them, and at their requeſt, and concerning all other matters of account then depending between them; and upon that account the ſaid *T. C.* and *L. M.* were found juſtly and truly indebted unto the ſaid *C. S.* in the ſum of ——— being foreign money of the value of——each; and thereupon the ſaid agents, they being fully authoriſed by them the ſaid *T. C.* and *L. M.* in this behalf, did for ſecuring the repayment of the ſaid ſum of———give unto the ſaid *C. S.* the four following bonds, all duly ſigned, ſealed and executed by the ſaid *J. G. S. C. E. B.* and *J. R.* and which has always been uſed there and eſteemed to be binding to the ſaid *T. C.* and *L. M.* ſince their union, bearing date on or about the——day of——in the year of our Lord——that is to ſay, one bond by which the ſaid agents did acknowledge to have borrowed and received of one *V. V.* the ſum of ——current money of that place, which ſaid ſum, with the intereſt thereof, after the rate of——by the hundred, by the month of thirty days, they the ſaid agents did oblige themſelves, their heirs, executors and adminiſtrators, for and on behalf of the ſaid *T. C.* and *L. M.* to repay on demand; and the other bond of like form, whereby the ſaid agents did acknowledge to have borrowed and received of one *B. G.* the ſum of —— of like money, which ſum, with intereſt thereof after the ſame rate, they did oblige themſelves, their heirs, executors and adminiſtrators, for and on behalf of the ſaid *T. C.* and *L. M.* to repay on demand; and one other bond of like form,

form, whereby the ſaid agents did acknowledge to have borrowed and received of one *S. N.* the ſum —— of like money, which ſum, with the intereſt thereof after the ſame rate, they did oblige themſelves, their heirs, executors and adminiſtrators, for and on behalf of the ſaid *T. C.* and *L. M.* to repay on demand; and one other bond of like form, whereby the ſaid agents did acknowledge to have borrowed and received of one *C. B.* the ſum of——of like money, which ſum, with the intereſt thereof after the ſame rate, they did oblige themſelves, their heirs, executors and adminiſtrators, for and on behalf of the ſaid *T. C.* and *L. M.* to repay on demand, as in and by the ſaid four bonds, had your orators the ſame to produce, might appear; And your orators further ſhew, that the ſaid *V. V. B. G. S. M.* and *C. B.* were merely truſtees or agents for the ſaid *C. S.* and that the ſaid bonds were given to him in their names, and for his uſe only, it being uſual in ——in the dominions of—— to take ſecurities for money in fictitious names, or in the names of truſtees, or perſons deceaſed, in order to conceal their ſubſtance from the governors of thoſe provinces, and to prevent arbitrary taxes and impoſitions from being impoſed upon them, and that they did ſeverally and reſpectively indorſe and aſſign the ſaid bonds to the ſaid *C. S.* or the property and right of the ſaid bonds, and every of them, and the money ſecured was thereby or otherwiſe legally and rightfully veſted in him the ſaid *C. S.* according to the laws of the country and nature and method of tranſacting ſuch affairs; and your orators expreſly charge, that the ſaid *C. S.* was the proprietor of the ſaid bonds, and admitted and acknowledged to be ſuch as well by the ſaid *T. C.* and *L. M.* as by the ſaid *J. G. S. C. R. B.* and *J. R.* and other the ſaid *T. C.* and *L.*

M.'s

M.'s agents in —— and ſeveral conſiderable ſums were actually paid by them to the ſaid *C. S.* upon account of the ſaid bonds, or the intereſt thereof; and your orators charge, that the ſaid rate of intereſt is a fair, uſual and lawful intereſt for the forbearance of money in that country. And the uſual and conſtant method of ſtating accounts of intereſt in that country is, at the end of every year to compute the intereſt then due as principal, and compute intereſt upon the ſame from the end of ſuch year. And your orators further charge, that the ſaid *V. V. B. G. S. N.* and *C. B.* are all of them perſons reſiding in —— out of the dominions of his Majeſty, and out of the juriſdiction and the reach of the proceſs of this honourable court, and in parts unknown to your orators. And your orators further ſhew, that the ſaid bonds ſo given were true and proper evidences of a debt due from the ſaid *T. C.* and *L. M.* to the ſaid *C. S.* and a charge upon them the ſaid *T. C.* and *L. M.* and ſuch as were uſually given by their direction and authority for the ſecuring of their juſt debts, and generally ſubmitted to in other caſes; And that they were actually given to the ſaid *C. S.* upon account of ſo much money really and juſtly due from the ſaid *T. C.* and *L. M.* as aforeſaid, upon the ſtating of the ſaid account. And your orators further ſhew, that ſome time after the ſtating of the ſaid accounts and giving the ſaid bonds as aforeſaid, the ſaid *T. C.* and *L. M.* united their ſaid ſtocks, and were united into one company, and by virtue of their union, and otherwiſe, the ſaid *T. C.* and *L. M.* are chargeable with and ought to pay all their and each of their juſt debts and demands, and particularly the monies ſecured or mentioned to be ſecured by the ſaid bonds ſo as aforeſaid given to the ſaid *C. S.* And the ſaid *T. C.* and *L. M.* did actually allow in account to the

the ſaid *C. S.* intereſt after the rate aforeſaid, for the ſaid ſum of——, mentioned in the ſaid bonds until the month of—— or—— in the year——. And your orators ſhew, that on or about the—— day of——in the year——, *J. B.* and *J. H.* being ſervants and agents of the ſaid *T. C.* and *L. M.* and acting on their behalf and by their direction, ſent for the ſaid *C. S.* to come to them on board a ſhip called the——, then lying at ——bar in——, under pretence to ſtate his accounts as they then ſtood with the ſaid *T. C.* and *L. M.* And your orators expreſſly charge, that at that time the principal monies due to the ſaid *C. S.* upon the ſaid bonds, together with the intereſt thereof after the rate aforeſaid (which was the ſame rate of intereſt as the ſaid *T. C.* and *L. M.* always charged the ſaid *C. S.* with for ſuch money and goods as they had at any time advanced to him) amounting to———and diſcounting thereout all ſuch monies and the full value of all ſuch goods as he had received from or upon account of the ſaid *T. C.* and *L. M.* with compound intereſt as aforeſaid, and all demands whatſoever which they had upon him, there would have remained due from the ſaid *T. C.* and *L. M.* to the ſaid *C. S.* at that time the ſum of——— and upwards, upon the ballance of all accounts; And your orators further ſhew, that inſtead of ſtating accounts with the ſaid *C. S.* in a fair and regular manner, as he hoped they would have done, they the ſaid *J. B.* and *J. F.* took him the ſaid *C. S.* into cuſtody, and confined him on board the ſaid ſhip, without his receiving any meat or drink, or having any refreſhment or relief of nature whatſoever for the ſpace of———or for ſome other long ſpace of time; he the ſaid *C. S.* being, as they well knew, forbidden, by the religion which he profeſſed and was of, to take any refreſhment or relieve nature

in

in any manner whatſoever elſewhere than upon dry land; and the ſaid *J. B.* and *J. F.* or one of them, during the ſaid time, uſed great cruelty towards him the ſaid *C. S.* frequently threatning to take away his life, unleſs he would comply with their propoſals, which were to ſign an agreement to deliver up his ſaid bonds, and to give ſome releaſe or diſcharge for the money due to him thereupon, upon his receiving ——— and being diſcharged from a debt of ——due from him to the ſaid *T. C.* and *L. M.* which aroſe from the money and goods which he had received upon account of the ſaid *T. C.* and *L. M.* and compound intereſt for the ſame after the rate aforeſaid; but the ſaid *C. S.* did for a long time and with great firmneſs refuſe to comply with ſuch unjuſt propoſals, and offered to ſtate his accounts with the ſaid *T. C.* and *L. M.* upon a fair and reaſonable foot, and allow all their juſt demands and objections; but the ſaid agents of the ſaid *T. C.* and *L. M.* or one of them, arbitrarily inſiſted upon defalking the greateſt part of what was due upon the ſaid bonds, without giving any reaſon for the ſame, threatning the ſaid *C. S.* that if he would not comply with their demands, they would carry him to —— where he ſhould ſettle his accounts, meaning that he ſhould ſettle his accounts in priſon; and your orators farther ſhew, that the ſaid *C. S.* being reduced to the greateſt extremity by the aforeſaid cruel confinement, and having no other way of obtaining a releaſe from the ſame, he was thereby forced and prevailed upon to ſign ſome inſtrument, purporting to be an agreement to the effect before-mentioned; upon which he was permitted to go on ſhore, and within a few days afterwards he was again applied to by the ſaid *J. H.* and *J. B.* and others, the ſervants and agents of the ſaid *T. C.* and *L. M.* and required to perform the ſaid agree-

ment, and deliver up his ſaid bonds, upon their diſcharging him in the name and on the behalf of the ſaid *T. C.* and *L. M.* from the ſaid demands of——but the ſaid pretended agreement having been ſo unduly extorted from him, he the ſaid *C. S.* at firſt abſolutely refuſed to comply therewith; upon which the ſaid ſervants and agents of the ſaid *T. C.* and *L. M.* again renewed their threats and menaces, and not only threatned violence to his perſon, but alſo threatned to complain of him to——who was an officer of great power and authority under the——and uſe the influence and intereſt of the ſaid *T. C.* and *L. M.* againſt him, and alſo threatned, that they would not only inſiſt upon the ſaid writing of agreement, ſo unjuſtly obtained, in bar of any claim upon the ſaid bonds, and that the ſaid *T. C.* and *L. M.* would never pay any money upon account of the ſaid bonds, but would alſo proſecute him the ſaid *C. S.* upon their demands againſt him; and he the ſaid *C. S.* at firſt refuſed to come to the ſaid *J. H.* and the other ſervants and agents of the ſaid *T. C.* and *L. M.* who ſent for him for the purpoſes aforeſaid, repreſenting to them, that he was afraid to come to them, leſt he ſhould be treated there as he had been on board the ſaid ſhip, which he explained to be by putting him under confinement, and terrifying him by threatning to take away his life; upon which the ſaid *J. H.* acquainted the ſaid *T. C.* and *L. M.* with this anſwer of the ſaid *C. S.* who thereupon thought fit to give ſome aſſurances to the ſaid *C. S.* by the ſaid *J. H.* that he ſhould not have any force offered to him, but ſhould be treated in a friendly manner; and upon ſuch aſſurances the ſaid *C. S.* came to the ſaid *J. H.* or ſome other agent or agents of the ſaid *T. C.* and *L. M.* and grievouſly complained of the great injury done him by the ſaid *T. C.* and *L. M.* in

forcing

forcing him by such undue means to relinquish so great a part of his just demands; but the said *J. H.* and other the agents of the said *T. C.* and *L. M.* absolutely refusing on the part of the said *T. C.* and *L. M.* to pay him any thing, or to settle his account upon any other footing than that of the said pretended and unjust agreement; and he the said *C. S.* having no way to compel the said *T. C.* and *L. M.* in that country to discharge the said bonds, and being much terrified with the apprehensions of a rigorous prosecution, he was so far imposed upon and intimidated as to deliver up to the said agents and servants of the said *T. C.* and *L. M.* all his said bonds, and to sign some release or discharge for the money due thereupon, upon their discharging him from the said sum of —— due from him as aforesaid, and paying to him the further sum of —— and no more, instead of —— and upwards, then justly due to him from the said *T. C.* and *L. M.* upon the ballance of his account, so that he was by the said force and threats compelled to accept of less than his just demands by the sum of —— and your orators expressly charge, that the said force and threats were made use of in pursuance of directions by the said *T. C.* and *L. M.* or one of them, or have since been approved of and authorised by them, and were for the benefit of the said *T. C.* and *L. M.* they taking advantage of the said unjust and extorted compensation of the said debt; and that the said *T. C.* and *L. M.* or one of them, in order to induce their said servants and agents to proceed in that manner, did actually promise to allow to their said servants or agents, or some of them, some certain *premium* or reward by the hundred for all monies which they should save to the said *T. C.* and *L. M.* in stating the accounts of the said *C. S.* out of what

monies were juſtly due to him upon the ſaid accounts; and an account being drawn by the ſaid *J. H.* to ſhew how much was ſaved to the ſaid *T. C.* and *L. M.* by the ſaid tranſactions with the ſaid *C. S.* the ſaid *T. C.* and *L. M.* or one of them, did afterwards actually pay or allow unto the ſaid *J. B.* and *J. H.* or ſome other of their ſervants or agents, the ſaid *premium* or reward for the ſaid ſum of —— being the ſum appearing by the ſaid account ſo drawn by the ſaid *J. H.* and by the books of their ſaid agents ſince tranſmitted from thence, and now in the cuſtody or power of the ſaid *T. C.* and *L. M.* or one of them, to be ſaved to them by the tranſactions aforeſaid out of what was juſtly due from them to the ſaid *C. S.* as aforeſaid; And your orators further ſhew, that the ſaid *C. S.* reſiding in —— and being advanced in years and incapable of taking ſo long a voyage as from thence to *Great Britain*, and having no way to commence any correſpondence with any perſons here, or to appoint any perſons to complain to any court of juſtice here of the ſaid fraud and oppreſſion but by means of the ſervants or agents of the ſaid *T. C.* and *L. M.* whom he was not able to prevail with to do him any ſuch office; no ſuit in law or equity was commenced againſt the ſaid *T. C.* and *L. M.* upon account of the ſaid demands during the life-time of the ſaid *C. S.* who departed this life in —— ſome time in the year ——. And your orators ſhew, that your orator *C. C.* is his only ſon and ſole heir, and as ſuch is, by the law of —— (in which country he has always reſided) well intitled to all the real and perſonal eſtate, and alſo to all the rights and credits of him the ſaid *C. S.* without taking adminiſtration, or any other ceremony; and your orator *J. R.* ſince the deceaſe of the ſaid *C. S.* hath obtained letters of

adminiſtration

administration out of the prerogative court of the archbishop of *Canterbury* of all and singular the goods and chattels, rights and credits which were of the said *C. S.* at the time of his decease, in trust for your orator *C. C.* he the said *C. S.* having made no will or other disposition of his effects, but having died intestate, as by the said letters of administration in the custody of your orator *J. R.* and ready to be produced to this honourable court, may appear; And your orators expresly charge, that no other administration hath been committed of the goods and chattels, rights or credits of the said *C. S.* And your orators farther shew, that on the —— day of ——— in the said year —— there being due from the said *T. C.* and *L. M.* to the said *C. S.* upon the ballance of their accounts, the sum of ——— foreign money of ——— as aforesaid; and there having accrued due to your orators from that time to the —— day of ——— last, for interest for the same, the further sum of ——— after the rate of interest aforesaid, in all —— being of the value of —— of lawful money of *Great Britain*, your orators well hoped, that the said *T. C.* and *L. M.* would have redelivered to your orators the said bonds so unjustly and unduly obtained from the said *C. S.* and would have paid to them the same; and for that purpose your orator *J. R.* in his proper person, and your orator *C. C.* by your orator *J. R.* his attorney lawfully authorised, have in an amicable manner applied to the said *T. C.* and *L. M.* for that purpose; **But now so it is,** may it please your Lordship, that the said *T. C.* and *L. M.* combining and confederating themselves to and with the said *J. B.* and *J. H.* and to and with divers persons unknown to your orators, whose names when discovered, your orators pray may be inserted herein, with apt words to

charge them as parties, and contriving to defeat your orators of the effects of the ſaid *C. S.* ſo fraudulently obtained from him as aforeſaid, do abſolutely refuſe to come to any account with your orators touching the premiſſes, moſt unjuſtly inſiſting, that the delivery of the ſaid bonds by the ſaid *C. S.* and the ſigning the ſaid releaſe is a legal bar to your orators demands; whereas your orators do expreſly charge, that the ſaid bonds and releaſe were obtained from him the ſaid *C.* by threats and cruel confinement, and great impoſition, and therefore ought to be ſet aſide in a court of equity; it plainly appearing by the books of the ſaid *T. C.* and *L. M.* that no manner of ſatisfaction whatſoever was ever made to the ſaid *C. S.* for the ſum of —— or any part thereof; And at other times the ſaid *T. C.* and *L. M.* pretend that they or either of them never were indebted to the ſaid *C. S.* in any ſum of money whatſoever; whereas your orators do expreſly charge, that the truth of the matters herein before ſet forth will appear as well from the books of the ſaid *T. C.* and *L. M.* and the accounts and entries of their tranſactions kept by themſelves and their ſervants, as by other good proofs thereof, which your orators are able and ready to lay before your Lordſhip; and at other times the ſaid *T. C.* and *L. M.* pretend, that they are intitled to the benefit of the delivering up of the ſaid bonds by the ſaid *C. S.* in manner aforeſaid, and that if he was impoſed upon therein, your orators ought to ſeek their remedy againſt their ſervants and agents who were guilty of the ſaid fraud and impoſition; whereas your orators charge, that the ſaid *T. C.* and *L. M.* having conſented to ſuch fraud and impoſition, and received the benefit and advantage thereof, they ought to be looked upon as parties to the ſaid fraud and impoſition,

poſition, and cannot be intitled to receive any benefit from the ſame; and the ſaid *T. C.* and *L. M.* ſometimes pretend, that the ſaid bonds or any of them, from the tenor thereof, are not, nor ever were, a proper charge upon them the ſaid *T. C.* and *L. M.* and that they are not obliged to pay the ſame or any part thereof; and that the ſaid *C. S.* was impoſed upon in the accepting of the ſaid bonds by the ſaid *J. G. S. C. E. B.* and *J. R.* who had not authority, as they the ſaid defendants pretend, from the ſaid *T. C.* and *L. M.* or either of them, to give ſuch bonds, or to charge them the ſaid *T. C.* and *L. M.* thereby, and that your orators ought to ſeek their remedy for the ſame againſt the ſaid *J. G. S. C. E. B.* and *J. R.* whereas your orators do expreſly charge, and ſo the truth is, that the ſaid bonds were given to the ſaid *C. S.* for a juſt debt then due from the ſaid *T. C.* and *L. M.* to him, the ſame being the ballance of the account then ſtated as aforeſaid between him and the ſaid *T. C.* and *L. M.* and as a ſolid and ſufficient ſecurity for the ſame; and in caſe they were not ſo, the giving the ſame was a groſs fraud, practiſed by the ſaid *T. C.* and *L. M.* by their ſaid agents upon the ſaid *C. S.* and the ſaid debt ought to be ſtill looked upon as ſubſiſting in caſe the ſaid bonds are not a good charge upon them the ſaid *T. C.* and *L. M.* and were no juſt ſatisfaction or proper ſecurity for the ſaid former debt; and your orators do humbly inſiſt, that in caſe the ſaid *C. S.* was impoſed upon or defrauded in accepting of the ſaid bonds, the ſaid *T. C.* and *L. M.* ought to be looked upon as parties to ſuch fraud and impoſition, in as much as they from time to time gave credit to the ſaid bonds, by crediting the account of the ſaid *C. S.* with the principal money and intereſt thereby ſecured or

mentioned ſo to be, and by payment of ſeveral conſiderable ſums in part of the ſame, and by that means preventing his ſeeking any remedy againſt the ſaid *J. G. S. C. E. B.* and *J. R.* touching the ſaid demands, in caſe they were liable thereto; and your orators farther ſhew, that ſoon after the giving of the ſaid bonds they the ſaid *J. G. S. C. E. B.* and *J. R.* either continued to reſide in ——— or otherwiſe withdrew themſelves into other parts remote and unknown to your orators, and out of the dominions of his Majeſty and the juriſdiction of this honourable court, ſo as they or any of them are not ameſnable to juſtice by any proceſs of this honourable court; and your orators are not able to diſcover where they or any of them do now reſide; And your orators farther charge, that the then ſervants and agents of the ſaid *T. C.* and *L. M.* who were concerned in the ſaid fraud and impoſition, except the ſaid *J. H.* and *J. B.* are long ſince dead, or in places remote and unknown to your orators, and where they cannot be reach'd by the proceſs of this honourable court; And the ſaid *T. C.* and *L. M.* or the ſaid *J. B.* and *J. H.* or one of them, now have or very lately had in their or one of their cuſtody or power, or in the cuſtody or power of ſome or one of their ſervants, the ſaid bonds ſo taken from the ſaid *C. S.* and the books and accounts, by which it fully appears, that the ſaid ſum of ——— was never paid or ſatisfied, but was ſaved to the ſaid *T. C.* and *L. M.* as aforeſaid; the which bonds are the proper evidence of your orators ſaid demands, and they detain them from your orators; and the ſaid *T. C.* and *L. M.* do refuſe to diſcover unto your orators, whether or no the ſaid *J. G. S. C. E. B.* and *J. R.* or any of them, or any other of their agents or ſervants at ——— aforeſaid, had

had authority from them the ſaid *T. C.* and *L. M.* to ſtate the accounts of the ſaid *C. S.* or to give the ſaid bonds as aforeſaid, or by what inſtrument, appointment, powers or inſtructions they were ſo authoriſed, or whether or no the ſaid ſtating of the ſaid accounts, or the giving of the ſaid bonds, was ever agreed to or approved of by the ſaid *T. C.* and *L. M.* or either of them. All which actings and doings, and pretences of the ſaid *T. C. L. M. J. B.* and *J. H.* and the reſt of their confederates are contrary to all equity and good conſcience, and greatly tend to the defrauding and defeating of your orators of their ſaid juſt demands. **In tender conſideration** whereof, and foraſmuch as your orators are without remedy in the premiſſes at the common law, and are proper to be relieved before your Lordſhip in a court of equity, where frauds and impoſitions are ſet aſide, and evidences unduly detained are directed to be delivered up, and where mutual accounts are taken and ballanced, and matters of this kind are properly cognizable; **To the end therefore** that the ſaid *T. C.* and *L. M. J. B.* and *J. H.* and their confederates, when diſcovered, may full, true and perfect anſwer make to all and every the matters and things herein contained, as particularly as if the ſame were here repeated and diſtinctly interrogated; and that not only as to their direct and poſitive knowledge and remembrance, but alſo as to the beſt of their information, judgment and belief, and eſpecially that the ſaid *T. C.* and *L. M.* may anſwer and ſet forth, whether or no your orator *C. C.* is not the ſon and ſole heir of the ſaid *C. S.* and whether by the laws of ——— or the laws in uſe in ——— or the country thereunto adjoining, your orator *C. C.* is not intitled to all the moveable and immoveable eſtate and effects of the ſaid *C. S.* and to all his rights

and

and credits; and whether the ſaid *T. C.* and *L. M.* were not in or about the year —— indebted unto the ſaid *C. S.* in a very conſiderable, and in what particular ſum of money, and whether an account was not about that time taken thereof in manner as is herein above ſet forth, or in any other manner, and how; and what was the reſult of that account, and what ballance was thereupon found due unto the ſaid *C. S.* and whether or no the bonds abovementioned, or ſome, and which of them, or any other, and what bonds were given by the ſaid *T. C.* and *L. M.* or their ſaid agents on their behalf, and on their account, to the ſaid *C. S.* upon that or any other, and what account; and may ſet forth, whether or no, at the time that the ſaid *C. S.* came on board the ſaid ſhip —— at —— bar, he was not intitled to the ſaid four bonds of the ſaid *T. C.* and *L. M.* or to ſome other, and what bonds of that nature; and whether it was not at that time, or is not now the cuſtom or uſage at ——— aforeſaid, for the forbearance of money at the end of every year, to add the intereſt then due to the principal, which makes the forbearance of the payment of the money due to be after the rate of three fourths by the hundred, by the month of thirty days, compound intereſt as aforeſaid; and whether or no the ſaid *T. C.* and *L. M.* or either and which of them, had not actually advanced ſeveral ſums of money to the ſaid *C. S.* in part of payment of the ſaid four bonds; and whether the ſaid *T. C.* and *L. M.* in their accounts with the ſaid *C. S.* had not charged him with intereſt after the rate of three fourths by the hundred, by the month of thirty days, compound intereſt for the money ſo advanced; and whether the ſaid *T. C.* and *L. M.* had not advanced and delivered to the ſaid *C. S.* ſeveral parcels of goods at certain prices

in

in part of payment of the ſaid bonds; and whether the ſaid *T. C.* and *L. M.* in their accounts with the ſaid *C. S.* did not charge him at the ſaid rate of three fourths by the hundred, by the month of thirty days, compound intereſt for the value of the goods ſo delivered from the time of their delivery; and whether in the ſaid month of —— in the year —— or —— when the ſaid *C. S.* was induced to go on board the ſaid ſhip —— at —— bar as aforeſaid, the principal and intereſt of the ſaid bonds eſtimated at the rate of three fourths by the hundred, by the month of thirty days, compound intereſt as aforeſaid, did not amount to the ſaid ſum of —— or to what other ſum the ſame did amount; and whether the ſeveral payments made in money and goods for the diſcharge of the ſaid bonds, did at that time in the whole, with intereſt at the rate of three fourths by the hundred, by the month of thirty days, compound intereſt, commencing from the time of payment of each of the ſums of money, or the delivery of each of the parcels of goods, amount to more than ——— or to what other ſum the ſame did amount in any account given in to the ſaid *C. S.* and allowed by him; and if the ſaid *T. C.* and *L. M.* pretend, that ſuch ſums of money, and the values of ſuch goods amounted to more, that then they may ſet forth ſuch accounts in the words and figures thereof; and that the ſaid *T. C.* and *L. M.* and the other confederates, may ſet forth, whether there was not due to the ſaid *C. S.* on the ballance of his account in the ſaid month of —— at the latter end of the year —— the ſum of —— and whether, notwithſtanding there was ſo large a ballance due to the ſaid *C. S.* the ſaid *T. C.* and *L. M.* by their agents aforeſaid, did oblige themſelves to pay to the ſaid *C. S.* more than —— or what

other ſum they did oblige themſelves to pay by the ſaid pretended agreement made on board the ſaid ſhip ——— and whether ſuch pretended agreement, or the obligation executed by the ſaid *C. S.* on board the ſaid ſhip, whereby he became obliged to deliver up the aforeſaid bonds, was extorted by force and violence, or was the reſult of any equal or impartial ſtating of accounts between the ſaid *T. C.* and *L. M.* and the ſaid *C. S.* and whether they have not heard, or do not believe, that the ſaid *C. S.* was of a ſect of religion which ſtrictly forbids the profeſſors thereof to eat meat, drink any ſort of drink, or to make uſe of any refreſhment or eaſe of nature during the time they are upon the ſea; and whether or no the ſaid *C. S.* was not invited by the ſaid *J. B.* and *J. H.* agents of the ſaid *T. C.* and *L. M.* to come on board the ſaid ſhip——at——bar, ———miles from the town of——and his place of abode, in order to ſettle his accounts; and whether the ſaid *C. S.* was not at that time, and always very ready to ſettle his accounts with the ſaid *T. C.* and *L. M.* upon a fair ballance of what was due to him from them for the ſaid bonds, and of what they alledged he was indebted to them for money and goods advanced to him; and whether the agents of the ſaid *T. C.* and *L. M.* or ſome or one of them, did not inſiſt upon his defaulking all or the greateſt part of what was due on the ſaid bonds, and whether the ſaid *C. S.* did not refuſe ſo to do; and whether the ſaid agents of the ſaid *T. C.* and *L. M.* or ſome, or one of them, did not thereupon threaten the ſaid *C. S.* that if he would not comply with the ſaid demands made on the behalf of the ſaid *T. C.* and *L. M.* he ſhould be carried to———, where he ſhould ſettle his accounts; and whether the meaning thereof was not that he ſhould ſettle his accounts in priſon; and whether the

the said *C. S.* was not detained ——, or for some other, and what space of time, on board the said ship ——, at —— bar in the month of ———, in the latter end of the year———, till he signed some writing obliging himself to deliver up the said four bonds, and to give a full discharge to the said *T. C.* and *L. M.* of all demands from them, and what space of time he remained on board the said ship; and whether he did eat any kind of meat or drink any kind of drink, or use any ease or refreshment of nature, during the time he continued on board the said ship; And whether or no they have not heard, or do not believe, that there was force, violence, or threats used, and particularly by threatning to take away his life, or otherwise, to the said *C. S.* on board the said ship ——, to terrify him into the signing an obligation of giving a full discharge to the said *T. C.* and *L. M.* on their payment of———, or upon any other, and what terms; and whether after the said *C. S.* had signed such obligation, and was permitted to go on shore, the said *J. H.* was not imployed on the behalf of the said *T. C.* and *L. M.* to carry the said obligation into execution; and whether upon his the said *J. H.* sending to the said *C. S.* in the month of —— in the year ———, to come to him at———, he the said *C. S.* did not immediately return for answer, that he was afraid to come to the said *J. H.* lest he should be treated by him as he had been on board the ship———; and whether he did not explain the same to be by putting him under confinement, and terrifying him by threatning to take away his life, as aforesaid; and whether the said *J. H.* did not acquaint the said *T. C.* and *L. M.* with this answer of the said *C. S.* and whether upon assurances given to the said *C. S.* by the said *J. H.* that he should not have force offered, but should

be

be treated in a friendly manner, he the ſaid *C. S.* did not then come to him; and whether the ſaid *C. S.* in the whole courſe of his treating with the ſaid *J. H.* till the ——— were paid, and the diſcharge ſigned in purſuance of the ſaid forced obligation, did not from time to time moſt grievouſly complain of the great injury done him by the agents of the ſaid *T. C.* and *L. M.* in forcing him to relinquiſh ſo great a part of his juſt debt; and whether the four bonds above-mentioned were not delivered up to the ſaid *J. H.* and a general diſcharge of all demands upon the ſaid *T. C.* and *L. M.* executed by the ſaid *C. S.* in or about the month of ——; and whether the ſaid bonds were not given up, and the diſcharge to the ſaid *T. C.* and *L. M.* executed in purſuance of the forced obligation aforeſaid, ſigned on board the ſaid ſhip ——, at ——— bar; and whether the ſaid *J. H.* or ſome other of the agents of the ſaid *T. C.* and *L. M.* did not make up the account of the ſaid *C. S.* with the ſaid *T. C.* and *L. M.* to the time of the delivering up of the ſaid bonds; and whether in the ſaid account there was not —— allowed, or appearing to be due to the ſaid *C. S.* for principal and intereſt on the ſaid bonds; and whether in the ſaid account the ſaid *S. C.* was made debtor to the ſaid *T. C.* and *L. M.* for more than ——, or for what other ſum for principal and intereſt of money or goods advanced by them to the ſaid *C. S.* or any other account whatſoever; and whether by the ſaid *T. C.* and *L. M.*'s accounts with the ſaid *C. S.* he was made debtor to them in the month of ——, for more than ——, or for what other ſum; and whether by the ſaid *T. C.* and *L. M.*'s accounts with the ſaid *C. S.* he was made debtor to them in the month of ——, for more than ——, or for what other ſum; and whether upon the delivering up of the ſaid bonds,

and

and ſigning the ſaid diſcharge by the ſaid *C. S.* he the ſaid *J. H.* or any other perſon on the part of the ſaid *T. C.* and *L. M.* paid to the ſaid *C. S.* more than ——, together with —— as intereſt of ——, that ſhould have been paid in ready money the —— before; and whether there was not ——, or ſome other, and what ſum of money paid ſhort to the ſaid *C. S.* of what was due on the ſaid bonds; and whether the ſaid article of ——was brought to account in the ſaid *T. C.* and *L. M.*'s accounts with the ſaid *C. S.* and in what manner the ſaid article was entered, and whether the ſame was or is entered as ſo much ſaved to them, or in what other manner the ſame was or is entered, to ballance the ſaid —— due to the ſaid *C. S.* as aforeſaid; and whether the ſaid agents of the ſaid *T. C.* and *L. M.* who went to —— bar as aforeſaid, and the ſaid defendants *J. B.* and *J. H.* or ſome, or one, and which of them, have not often made great merit of ſaving to the ſaid *T. C.* and *L. M.* ſo much money by the adjuſtment with the ſaid *C. S.* as aforeſaid; and whether the ſaid *T. C.* and *L. M.* or either, and which of them, have not been applied to by their ſaid agents, or ſome, or one, of them, for ſome recompence for ſuch great ſervice; And whether the ſaid *T. C.* and *L. M.* have not diaries, books of accounts, and books of conſultations at —— ſent every year to them into *England*; and that the ſaid *T. C.* and *L. M.* before they put in their anſwer to this your orators bill, may cauſe diligent ſearch to be made in the ſaid diaries, books of accounts, and books of conſultation, and the ſeveral other accounts and minutes hereby inquired after; and that they may ſet forth a true copy of the diary or conſultation held on board the ſhip ——on the——of——, at which were preſent the ſaid *J. B.* and *J. H.* and that the ſaid *J. B.*

and

and *J. H.* may ſeverally and reſpectively ſet forth what they know, remember, or have been informed concerning the tranſactions with the ſaid *C. S.* touching his ſaid bonds and accounts with the ſaid *T. C.* and *L. M.* on board the ſaid ſhip ——, or at any time afterwards; and that the ſaid *T. C.* and *L. M.* and the ſaid *J. H.* may ſet forth a true copy of the ſaid account drawn by the ſaid *J. H.* as aforeſaid, ſhewing how much was ſaved to the ſaid *T. C.* and *L. M.* by the ſaid tranſactions with the ſaid *C. S.* and that the ſaid *J. H.* and *J. B.* may ſeverally anſwer and ſet forth, if any, and what premium or allowance was given or made to the ſaid ſervants or agents by the ſaid *T. C.* and *L. M.* for or in reſpect of the money ſaved to them by their ſaid tranſactions with the ſaid *C. S.* or whether the ſaid *T. C.* and *L. M.* or either, or which of them, did not promiſe to make or give them ſome and what allowance or premium thereupon, and whether the ſaid *J. B.* and *J. H.* have not made ſeveral, and what applications, to the ſaid *T. C.* and *L. M.* either and which of them, for ſome, and what premium or allowance thereupon, and what was the reſult and conſequence of ſuch applications, according to the beſt of their knowledge, remembrance or belief; and that the ſaid defendants, and every of them, may ſet forth what is now become of the ſame bonds, and of every of them, and where, and in whoſe hands, cuſtody, knowledge, or power, the ſame bonds, or any of them now are, or at any time ſince the delivering up of the ſame, and when laſt were, or have been, and whether the ſaid bonds, or ſome of them, and to what amount, have not ſince the delivering up thereof been in the cuſtody of the ſaid *T. C.* and *L. M.* or of the ſaid other defendants, or one of them; and whether the ſaid *C. S.* be now living or dead, and if he

he be dead, when he died, and in what country, to the beſt of their knowledge, information, and belief; and whether he or your orator *C. C.* were ever in *Great Britain*, as they know or believe; and that the ſaid releaſe ſo unjuſtly obtained from the ſaid *C. S.* may be ſet aſide and delivered up to your orators to be cancelled; and that the ſaid bonds may be delivered up intire and uncancelled to your orators, and that the ſaid *T. C.* and *L. M.* may come to a fair account with your orators, touching all monies due to the ſaid *C. S.* in his life-time, or to your orators or either of them, in his right, ſince his death, for principal and intereſt upon the ſaid bonds, and all juſt demands and accounts depending between the ſaid *T. C.* and *L. M.* and him the ſaid *C. S.* in his life-time, and may pay to your orators what ſhall appear to be due upon the balance of ſuch accounts; and that your orators may have ſuch farther and other relief touching the premiſſes, as ſhall be agreeable to equity, and as your Lordſhip ſhall think fit. May it pleaſe, *&c.*

A bill for tithes.

To the Right Honourable, &c.

HUMBLY complaining, ſheweth unto your Lordſhip, your orator *J. P.* of *P.* in the county of *C.* that your orator now is, and for ſix years laſt paſt hath been ſeiſed in fee, and proprietor and owner of all and every the tithes of corn and grain, and other great and predial tithes whatſoever ariſing, renewing, increaſing, and growing within the townſhips, hamlets and vills of *W.* and *A.* and the tithable places thereof in the pariſh of *B.* and parcel of the impropriate

rectory thereof in the ſaid county of *C. and particularly of the tithes of corn and grain, and other great and predial tithes ariſing, renewing, increaſing and growing in, upon and within the tenement called* B. *in* A. *and* W. *aforeſaid, or one of them, and by reaſon* thereof during all the time aforeſaid, was and now is juſtly, rightfully and lawfully intitled unto, and ought to have enjoyed, had, and received, and ought to have, enjoy and receive, all and every the tithes of corn, grain, and other great and predial tithes ariſing, renewing, increaſing or growing, or which, during the ſaid time have ariſen, renewed, increaſed or grown within the ſaid townſhip, hamlets and vills of *W.* and *A.* and either of them, and particularly in, upon and within the ſaid tenement called *B.* and alſo all and every the ſums, matters and things whatſoever, which during the ſaid time, of right, or by any cuſtom within the ſaid townſhip, hamlets or vills, have been payable, as for or on account of tithe corn, grain, or other great and predial tithes, or which ought to have been ſo payed or anſwered. And your orator further ſheweth to your Lordſhip, that *M. B.* widow, and *B.* her ſon, jointly and ſeverally, for and during the ſaid ſpace of ſix years laſt paſt, had held, or occupied and enjoyed the ſaid tenement called *B.* within *A.* and *W.* aforeſaid or one of them, or the lands and grounds thereunto belonging, and other lands and grounds within *A.* and *W.* aforeſaid, or one of them, or the titheable places thereof in and upon the ſame, and within the ſaid townſhips, hamlets and vills, or one of them, and the titheable places thereof, and had jointly and ſeverally growing, renewing, increaſing, and thence reaped, and had, and took in the ſaid years reſpectively ſeveral quantities of corn and grain, to wit, in each of the ſaid years 100 ſhocks or hattocks of wheat,

the tithe whereof in each year, if duly paid, would have been worth 20 *s.* One hundred ſhocks or hattocks of rye, the tithe whereof was worth in each year other 20 *s.* Three hundred hattocks or ſhocks of oats, the tithe whereof would have been worth in each of the ſaid years, if paid, 30 *s.* One hundred and fifty ſhocks or hattocks of barley, the tithe whereof, if the ſame had been duly anſwered, would have been worth other 30 *s.* One hundred ſhocks or heaps of beans, the tithe whereof was worth 15 *s.* One hundred ſhocks or heaps of peaſe, the tithe whereof was worth other 15 *s.* Two hundred ſhocks or hattocks of bigg, the tithe whereof was worth 30 *s.* and upwards. All which ſaid ſeveral tithes became due and payable from the ſaid *M. B.* and *B.* her ſon, jointly or ſeverally, in each of the ſaid years, and ought to have been juſtly and duly paid and anſwered unto your orator as proprietor and owner of the ſaid tithes and premiſſes. **But ſo it is,** may it pleaſe your Lordſhip, that the ſaid *M. B.* and *B.* having entered into a combination and confederacy between themſelves, and with ſeveral other perſons unknown to your orator, who when they ſhall be diſcovered, your orator prays they may be made parties hereto, with apt words to charge them, have and either of them hath neglected, omitted and refuſed to ſet out, pay, ſatisfy, or anſwer, and have not, nor hath either of them in any of the ſaid years, ſet out, paid, ſatisfied, or anſwered unto your ſaid orator the ſaid ſeveral and reſpective tithes, or any of them, or made any agreement, compoſition, or juſt ſatisfaction to your ſaid orator for the ſame, or any thing in lieu thereof, but tho' in a friendly manner requeſted thereto, have and hath jointly and ſeverally refuſed to ſet out the ſame, or to pay or anſwer what is juſtly due to your orator on thoſe

accounts, or fairly or juſtly to ſet forth, yield, or pay their and either of their ſaid tithe, or to pay and make him any juſt ſatisfaction for the ſame, or for any the tithes ſubſtracted and with-held by them or either of them; but as they have concealed, ſo they do, and each of them doth endeavour to conceal the ſaid titheable matters, and refuſe to diſcover what lands, tenements and hereditaments in particular they jointly and ſeverally held, occupied, plowed and reaped within the ſaid townſhip, hamlets and villages, in each of the ſaid years, nor what tithes of corn and grain they in each of the ſaid years, or either of them reſpectively with-held and detained from your orator, nor what is and was the value thereof; and as their reaſon for ſo doing the ſaid confederates ſometimes inſiſt, that they have duly paid and anſwered to your orator the tithes of all and ſingular the titheable matters, and at other times that they are not nor were liable to the payment of any tithe in kind, but exempt and free from the payment thereof *under an antient* modus *or compoſition of* 10s. *yearly, or other the like ſum payable time immemorial, in lieu of tithes of corn and grain, and other great and predial tithes ariſing, renewing, increaſing and growing upon and within the ſaid tenement and lands held, enjoyed, ſown and reaped by them in the ſaid ſeveral years aforeſaid; which* modus *they pretend was paid by them in and for the ſaid ſeveral years unto your orator*; whereas your orator charges, as the truth is, that the ſaid confederates, or either of them, did not ſet forth, pay, or anſwer the tithes due to your orator for the corn and grain reaped, had and taken by them, which grew upon the ſaid tenement, lands and premiſſes, or any of them, in or for any the ſaid years herein before mentioned, nor have they or either of them paid or anſwered any *modus*, pretended

tended *modus*, or compoſition to your orator for the ſame, for any of the ſaid years; and the truth is, as your orator charges it to be, that tithes of corn and grain, and other great and predial tithes ariſing from the premiſſes, are due and payable, and ought to be anſwered and paid unto your orator in kind; and the ſaid confederates are not nor ought to be exempt from the payment thereof, upon any pretence of a *modus* payable in money, as in lieu thereof, which however was never paid to your orator; *and if there was any colour to ſet up ſuch pretences to a* modus, *yet that is owing to a late agreement, whilſt the tithes, as alſo the ſaid tenement and lands were in the hands of the family of the* M's *and not any preſcriptive* modus, *nor was the ſaid tenement antiently diſcharged from payment of tithes in kind, upon or under payment of any* modus *or ſum in lieu of tithes; but tithes in kind were paid and anſwered as for other the lands or tenements within the ſaid townſhip, till the ſaid tenement and tithes both came into the hands, ownerſhip or poſſeſſion of* M. *of* H. *in the ſaid county, who ſettled and conveyed the ſaid tithes upon or unto one of his younger ſons, from whom the ſame deſcended and came to* R. M. *Eſq; his kinſman, of whom your orator purchaſed the ſame; and the ſaid tenement called* B. *continuing in the ownerſhip of ſome other of the* M's, *near relations to the then proprietors of the ſaid tithes, they on account of kindred or other motives complied to accept* 10s. per annum, *or other ſuch ſum in money for the tithes ariſing from the ſaid tenement, which being a temporary agreement only, and not any* modus *that had been paid time immemorial, your orator humbly apprehends himſelf not to be bound or obliged thereby, nor ought the ſaid confederates, nor either of them, who, or one of them, purchaſed the ſaid tenement, or claim under ſome*

purchaſer thereof, or have or hath poſſeſſed the ſame during the time aforeſaid, to have or claim any diſcharge or exemption from payment of tithes in kind, as upon or under any ſuch pretences, they, or one of them, well knowing or having been informed, or from the papers, books, notes, and memorandums in their keeping or power, may be well ſatisfied that there was antiently no ſuch modus *paid or received in diſcharge of tithes ariſing from the ſaid tenement; but that which was paid and received as on account thereof was modern and under late agreement and compliance whilſt the ſaid tenements and tithes were both in the hands of the family of the* M's; *and the ſaid* confederates ought of right and juſtice to have anſwered and paid unto your orator their ſaid ſeveral tithes for the ſaid titheable matters ariſing and growing in and upon the ſaid tenement, and within the ſaid townſhip, vills and hamlets as aforeſaid; yet the ſaid confederates and each of them, under ſome and the like frivolous and unjuſt pretences as aforeſaid, have refuſed, and do refuſe to pay or anſwer the ſaid tithes or any of them to your ſaid orator, or to make him any juſt ſatisfaction for the ſame, or to make him any full and fair diſcovery of the titheable matters they ſeverally had within the ſaid townſhips, hamlets and vills and titheable places thereof, in the ſaid ſeveral years, or any of them, tho' they have been ſeverally requeſted thereto. All which actings, doings, pretences and deſigns of the ſaid confederates are contrary to equity and good conſcience, and tend to your orator's great wrong and injury: **In tender conſideration whereof,** and for that your orator cannot exactly prove the ſeveral natures, kinds and quantities of the ſaid titheable matters, nor what the ſaid tithes due from them and each of them unto your orator did or might in each of the ſaid years amount unto,

unto, but the ſame being induſtriouſly concealed by the ſaid confederates remain principally in their knowledge; from whence and the evidence your orator may give, he your ſaid orator well hopes he ſhall be enabled to make out his charge againſt the ſaid confederates, whereupon to be relieved and to obtain ſatisfaction for the ſingle value of the ſaid tithes ſubſtracted and with-held as aforeſaid, and to have ſuch other relief and ſatisfaction as may appear juſt: **To that end thereforе,** and in order thereto, that the ſaid confederates may upon their ſeveral corporal oaths, true, perfect and diſtinct anſwer make to all and ſingular the premiſſes, and more eſpecially that they and either of them may diſcover and ſet forth what particular lands, tenements, grounds and hereditaments they jointly and ſeverally had during the ſaid ſix years, or any and what part thereof held, occupied or enjoyed within the ſaid townſhip, hamlets and vills, and each of them, and ſet forth what parts thereof were in each of the ſaid years ſown with corn and grain, and the pieces, kinds and values thereof in each year diſtinctly, and what corn they jointly and ſeverally reap'd, had, cut or took within the ſaid townſhip, hamlets and vills, and in what years diſtinctly of the ſaid ſix years, and what was and were the full value of the tithe thereof in each of the ſaid years diſtinctly, if the ſame had been paid in kind; and whether your orator, or ſome, and who, on his behalf, did not, at ſome, and what time and times, apply to them, or one, and which of them, to ſet out or anſwer their, or one, and which of their ſaid tithes, and ſhew cauſe, if they can, why they refuſed ſo to do; and whether they have not ſeverally neglected or refuſed to pay or anſwer the ſame, or to give any ſatisfaction or make any compoſition or recom-

pence to your orator for or in lieu of the tithes, and what were the ſeveral tithes of corn and grain grown, reaped, and had by them, and either of them, within the ſaid townſhip, hamlets and vills, worth, if the ſame had been juſtly paid and anſwered in each of the ſaid ſix years; *and if they, or either of them, ſhall ſet up or pretend to any* modus *or compoſition, as for or in lieu of the ſaid tithes, or any of them, that they may ſhew whether they have paid or tendered the ſame in any and what years, and when, where, and to whom, and for what years the ſame is arrear and unpaid, and what ſuch* modus *is in particular, and to what lands, tenements and grounds the ſame extends, and which is covered or pretended to be covered thereby, and which not, and when ſuch* modus *or compoſition commenced, and by and under what agreement, and when and with whom made, and whether, as they* ſeverally have heard and believe, the tithes of corn and grain growing and ariſing from the ſaid tenement, lands and premiſſes, or ſome, and which of them, were not paid, and what in kind; and *whether the* 10s. *or other ſum pretended to be paid or payable as a* modus *or compoſition for or in lieu of great tithes ariſing from the ſaid tenement and premiſſes, was not by or under ſome, and what agreement or compliance whilſt the ſaid tithes and tenement were in the hands of ſome of the family of the* M's; *and whether the ſame was made perpetual or only temporary, and during what time ſuch* modus *or compoſitioa was paid and accepted, and by whom and when*; and that they may make diligent ſearch amongſt all the books, papers, notes and memorandums in their or either of their cuſtody or power, and ſet forth what they know, have heard or can find relating to the ſaid pretended *modus* or payment of tithes in the very words and figures, and ſhew cauſe, if they can, why

why they have ſeverally refuſed or neglected to ſet forth, and pay, and anſwer their and either of their tithes to your orator, or to make him any recompence, compenſation or ſatisfaction for the ſame, or for the value, or in lieu thereof; and that the ſaid confederates may, upon a full and juſt diſcovery of the premiſſes, be decreed and obliged to pay, ſatisfy and anſwer unto your orator all and every the tithes ſubſtracted by them and either of them, or the juſt value thereof, as in every of the ſaid years became juſtly due and payable from them and either of them reſpectively unto your ſaid orator, not deſiring to take advantage of the forfeiture of the treble value, but well contenting himſelf with the ſingle value of the ſaid tithes ſubſtracted, with-held, and not paid; and if any *modus* ſhall be ſet up and ſupported, that they may ſhew in particular to what lands and grounds the ſame extends, and why they have not paid and anſwered the ſame, and may be decreed to make payment thereof and of the arrears; and that your orator may, upon a full and fair diſcovery of all and every the matters and things aforeſaid, and of the circumſtances and particulars relating thereto, upon the oath of the ſaid confederates, be otherwiſe relieved in all and ſingular the premiſſes, according to equity and good conſcience. May it pleaſe your Lordſhip to grant unto your orator his Majeſty's moſt gracious writ of *ſubpœna* to be directed to the ſaid *M. B.* and *B.* her ſon, thereby commanding them, *&c.*

A bill to carry articles of agreement into execution, by a bargainor againſt a bargainee, and for a ſpecifick performance thereof.

To the Right Honourable, &c.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix *E. G.* of *B.* in the county of *C.* widow, that your oratrix being ſeiſed in fee of and in a freehold meſſuage and tenement with the appurtenances, ſituate, lying and being in *B.* aforeſaid, which ſhe and *J. T.* her late father deceaſed, in or about the year of our Lord ———, conveyed by way of mortgage unto *J. L.* late of *L.* in the ſaid county of *C.* yeoman, ſince deceaſed, and his heirs for ſecuring the repayment of the ſum of —— with intereſt after the rate of ten-pence in the pound or thereabouts; and your oratrix being alſo ſeiſed in fee, or otherwiſe well intitled, to her and her heirs, according to the cuſtom of the manor of *W.* in or to a cuſtomary or tenant right meſſuage or croft called *P.* meſſuage, with the garth and front to the ſame adjoining, and part of another garth or curtilage lying at the weſt end of the beforementioned freehold meſſuage, and alſo of divers parcels of cuſtomary or tenant-right lands herein aftermentioned, parcel of the ſaid manor of *W.* and ſituate, lying and being within the townſhip or town-fields of *B.* aforeſaid, namely, two butts of arable land on the eaſt-ſide of the gards; four riggs of arable land called the croft, containing by eſtimation two acres or thereabouts; three ſeveral parcels of arable and meadow ground ſituate, lying and being in a place called the ———, and containing together by eſtimation half an acre, or thereabouts, and all of them abutting on the Lord's

Lord's waſte towards the north; one other parcel of ground called ———, containing by eſtimation one rood or thereabouts; one parcel of ground called the ——— land, containing by eſtimation one rood or thereabouts; and one parcel of ground called *B.* containing by eſtimation half an acre or thereabouts; and your oratrix being ſo ſeiſed and intitled to the ſaid freehold and cuſtomary meſſuages, lands and premiſſes, and being deſirous to make ſale thereof in order to raiſe monies wherewithal to diſcharge the aforeſaid mortgage, ſhe did therefore give publick notice for the ſale of the ſame by publick cant or auction, to the beſt bidder, to be on the —— day of ——— laſt; at which time the ſaid meſſuages, lands and premiſſes were put up to ſale accordingly; and *T. P.* of *E.* in the pariſh of *B.* in the county of *C.* yeoman, and divers other perſons, offered themſelves as purchaſers, and bid monies for the ſaid premiſſes; and the ſaid *T. P.* having at laſt offered and bid the ſum of ——, a bargain was ſtruck with him as being the higheſt bidder for the ſame; and thereupon your oratrix and the ſaid *T. P.* (who had been informed and very well underſtood that the ſaid freehold meſſuage and tenement ſtood incumbered with the aforeſaid mortgage) entered into and mutually ſigned articles of agreement between them, bearing date the —— day of ——— in the year of our Lord —— and made or mentioned to be made between your oratrix of the one part, and the ſaid *T. P.* of the other part, whereby your oratrix, for and in conſideration of the ſum of ——— of lawful *Britiſh* money, to be paid as in the ſaid articles is mentioned, covenanted and agreed with the ſaid *T. P.* that your oratrix would, on or before the —— day of ——— then next enſuing (at the proper coſts and charges of the ſaid *T. P.* and by

ſuch

ſuch conveyances, ways and means in the law as his counſel ſhould adviſe) grant, convey and aſſure unto the ſaid *T. P.* his heirs and aſſigns, all that her ſaid two meſſuages and freehold lands (one acre called *W.* croft ſide and eaſt garth, and half an acre called *T.* rigg, and alſo the half rigg and *G.* butts, being parcels of the ſaid freehold tenement, only excepted and foreprized) together with the beforementioned parcels of cuſtomary or tenant-right lands, containing by eſtimation three acres and a half, or thereabouts, free from incumbrances; And it was in and by the ſaid articles of agreement, covenanted and agreed, that your oratrix ſhould have and hold for her life the manſion-houſe wherein ſhe then lived, together with the buyer at the end, and a little barn at the north end of the old houſe; and that the ſaid *T. P.* ſhould pay to the Lord of the ſaid manor the yearly apportioned rent of 4*s.* for the ſaid cuſtomary premiſſes agreed to be conveyed to him as aforeſaid, together with four-pence yearly in lieu of boon days; as alſo four-pence yearly as for his proportion of the preſcription money, payable out of the ſaid cuſtomary tenement, for and in lieu of the tithes thereof; and that your oratrix ſhould have a proportionable ſhare of the moſſes belonging to the aforeſaid meſſuages, as alſo of the mire in the place called the *W.* and the ſaid *T. P.* did, in and by the ſaid articles of agreement, for himſelf, his heirs and aſſigns, covenant and grant to and with your oratrix, her heirs and aſſigns, that he the ſaid *T. P.* ſhould and would pay unto your oratrix, or her aſſigns, the ſum of ——, part of the ſaid conſideration money, upon the executing ſuch conveyances of the premiſſes as aforeſaid; and the further ſum of —— on or before —— day of —— next following; and the further ſum of —— reſidue of the ſaid conſideration

deration money, on or before the —— day of ——, as and for the purchaſe money of the ſaid meſſuages and premiſſes abovementioned, as by the ſaid articles of agreement under the hands of your oratrix and the ſaid *T. P.* ready to be produced to this honourable court (relation being thereunto had) it doth and may more fully and at large appear; and your oratrix further ſheweth unto your Lordſhip, that *J. L.* of *L.* aforeſaid, yeoman, executor of the ſaid *J. L.* the mortgagee, being made acquainted with the contract made between your oratrix and the ſaid *T. P.* for the purchaſe of the ſaid premiſſes, did promiſe and agree to accept of the monies due upon the ſaid mortgage, amounting then to the ſum of —— or thereabouts; and upon payment thereof, to join with your oratrix in ſuch conveyance or conveyances of the ſaid freehold premiſſes, as he and the ſaid *T. P.* or his counſel learned in the law ſhould reaſonably deviſe, adviſe or require. And your oratrix hath frequently and in an amicable manner applied to the ſaid *T. P.* to know by what conveyance, ways and means in the law he would have the ſaid purchaſed meſſuages, lands and premiſſes granted and conveyed to him, your oratrix at the ſame time offering and propoſing to the ſaid *T. P.* that ſhe and all others having and claiming any eſtate, right, title, or intereſt of, in, to, or out of the ſaid premiſſes, ſhould join in making and executing any ſuch grant and conveyances thereof free of all incumbrances, as he the ſaid *T. P.* ſhould require, or his counſel ſhould deviſe or adviſe in that behalf, according to the true intent and meaning of the articles of agreement ſo made as aforeſaid; and the ſaid *T. P.* for ſome time ſeemed inclinable to come into meaſures, as if he would proceed in the purchaſe of the ſaid premiſſes; and in proſecution thereof

actually

actually contracted and agreed with your oratrix to permit her to occupy and hold the poſſeſſion of one acre in *L.* one acre called ——, half an acre called *G.* one rood in *S.* land, half an acre in *N.* lands, three days work of meadows in *B.* fields, two roomſteads in the barn, and a parcel of ground lying behind the ſaid barn in a place called the *W.* gards or garth, being parcel of the ſaid freehold premiſſes; and alſo two acres called *C.* with the gards and front, being parcel of the ſaid cuſtomary premiſſes, and one rood of freehold lying in it; half an acre called *N.* and one rood in *S.* being other parcel of the ſaid cuſtomary premiſſes purchaſed as aforeſaid for one year, to be computed from ——— laſt paſt, at or under the yearly rent of ———. And though your oratrix having propoſed and offered to the ſaid *T. P.* to do and perform, and to cauſe and procure to be done and performed, every thing that was requiſite and reaſonable (and on her part to be performed) in order to grant, convey and aſſure to the ſaid *T. P.* his heirs and aſſigns, the ſaid purchaſed meſſuages, lands and premiſſes according to the tenor and intent of the ſaid articles of agreement, had good reaſon to expect that the ſaid *T. P.* would have ſignified to your oratrix how or in what manner he would have the ſame conveyed to him, ſo as your oratrix might have had the effect of the ſaid agreement anſwered and performed, and the conſideration money ſtipulated to be paid as aforeſaid, paid and ſecured to her at the days and times in the ſaid articles of agreement mentioned in that behalf, as in juſtice ſhe ought: **Yet now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *T. P.* having entered into a combination and confederacy to and with the ſaid *J. L.* and *J. L.* of the town and county of *N.* merchant, eldeſt brother and

and heir of the ſaid *J. L.* deceaſed, and to and with divers other perſons as yet unknown to your oratrix, (whoſe names when diſcovered your oratrix prays may be inſerted herein, with apt and proper words to charge them and every of them as defendants) to defraud your oratrix of the premiſſes; and they having thereupon formed a deſign to diſappoint her of the ſaid purchaſe monies, and to defeat her of the benefit of the ſaid articles of agreement ſo made and entered into as aforeſaid, he the ſaid *T. P.* for that purpoſe has refuſed, and perſiſts in his refuſal, either to ſignify to your oratrix what manner of conveyance he requires, or his counſel adviſes, to be made to him of the ſaid meſſuages, lands and premiſſes, or yet to accept of any conveyance whatſoever thereof, or to pay or ſecure to your oratrix any part of the monies agreed by him to be paid for the purchaſe of the ſaid premiſſes; and to give ſome countenance to the unjuſt pretences and refuſals of the ſaid *T. P.* they the ſaid *J. L.* and *J. L.* do pretend and give out, that the legal eſtate of and in the ſaid premiſſes being in the ſaid *J. L.* by virtue of the mortgage aforeſaid to the ſaid *J. L.* their brother, they the ſaid *J. L.* and *J. L.* are not, nor is either of them, under any obligation to execute or to join with your oratrix in any conveyance thereof, or to do any act towards the performance and execution of the ſaid articles of agreement; whereas your oratrix charges, (and ſo the truth is) that they the ſaid *J. L.* and *J. L.* have not, nor hath either of them, any other eſtate, right, title or intereſt, of, in, to, or out of the ſaid meſſuages, lands and premiſſes, or any part thereof, ſave only by way of mortgage for the ſecuring only the ſum of —— or thereabouts, which your oratrix propoſes may be ſatisfied and anſwered from and out of the firſt payment of the purchaſe money

ney in the ſaid articles of agreement mentioned, and which your oratrix hath offered, and is ready to pay, or appoint to be paid to them, or ſuch of them, as ſhall be intitled thereto, upon their reconveying to your oratrix the ſaid mortgaged premiſſes, or otherwiſe upon their joining with her in a proper conveyance thereof unto the ſaid *T. P.* And though your oratrix hath requeſted the ſaid *J. L.* and *J. L.* to come to an account with her, touching the demands which they or either of them may have or claim, of, in or out of the ſaid premiſſes, ſo as the ſame might be ſettled, and your oratrix have an opportunity to pay off and diſcharge the ſame, and to take a reconveyance of the ſaid mortgaged premiſſes, yet do they ſeverally refuſe to comply therewith, nor will they make any diſcovery of the particulars of their demands, and what remains juſtly due to them or either of them for principal and intereſt upon the mortgage, nor admit your oratrix to any redemption of the ſaid premiſſes; All which actings, refuſals, pretences and deſigns of the ſaid confederates are contrary to equity and good conſcience, and tend to your oratrix's great wrong and injury. **In tender conſideration** whereof, and foraſmuch as your oratrix cannot compel a conveyance of the ſaid mortgaged premiſſes, nor obtain a due execution, or any ſpecific performance, of the contract and articles aforeſaid, or be otherwiſe relieved in the premiſſes than by the aid and aſſiſtance of this honourable court; **To the end therefore,** and in order that the ſaid *T. P. J. L.* and *J. L.* and their confederates, when and as they ſhall be diſcovered, may upon their ſeveral and reſpective corporal oaths true and perfect anſwer make to all and ſingular the premiſſes herein before ſet forth, as fully as if the ſame were here again repeated, and particularly interrogated to be anſwered

anſwered unto, and more eſpecially that the ſaid confederates may, according to the beſt of their reſpective knowledge, information and belief, anſwer and ſet forth, whether your oratrix was not ſeiſed in fee, or how otherwiſe well intitled, in and to the ſaid freehold and cuſtomary, or tenant-right meſſuages, lands, hereditaments and premiſſes, as herein before is ſet forth; and whether ſhe did not give ſuch notice for the ſale thereof as herein before is mentioned; and whether the ſaid *T. P.* was not the beſt bidder at ſuch ſale; and whether a bargain was not ſtruck with him for the ſaid premiſſes; and whether he did not come to ſuch agreement, and enter into and ſign ſuch articles for the purchaſe thereof upon ſuch terms, and at and for ſuch rate and price, and to ſuch effect, as herein before is in that behalf ſet forth, or to any other, and what effect and purpoſe; and whether they the ſaid *J. L.* and *J. L.* were not, or one of them was not preſent at the ſaid ſale, and conſented thereto, or ſhortly and how ſoon after ſuch ſale acquainted therewith; and whether they, or one, and which of them, did not thereupon agree and promiſe to join with your oratrix in granting and conveying the ſaid premiſſes, or ſome, and what part thereof, unto the ſaid *T. P.* and his heirs; and whether your oratrix hath not ſeveral times applied to the ſaid *T. P.* to know how or by what means or manner of conveyance he required, or his counſel adviſed, the ſaid bargained premiſſes to be granted and conveyed to him, and why or for what reaſon or reaſons he refuſed to ſignify the ſame to your oratrix, or to accept of any conveyance of the ſaid premiſſes, or yet to pay or ſecure to your oratrix any part of the monies agreed to be paid for the purchaſe thereof; and that the ſaid *J. L.* and *J. L.* may ſeverally anſwer and ſet forth, whether your

oratrix did not make ſeveral and what offers and propoſals to induce them, or the one and which of them, to join with your oratrix in granting and conveying the ſaid bargained premiſſes unto the ſaid *T. P.* and his heirs, and that they may ſhew cauſe (if they can) why they ſhould not join with your oratrix in ſuch grant or conveyance, or otherwiſe reconvey to your oratrix the ſaid freehold premiſſes, upon payment of what ſhall appear to be juſtly due upon the mortgage thereof to the ſaid *J. L.* deceaſed, and that they may ſet forth what is really and juſtly due to them or either of them for principal and intereſt upon the ſaid mortgage, and may come to a fair account with your oratrix touching the ſame; and your oratrix being willing that ſo much as ſhall appear, upon a fair and juſt account, to be due may be paid and anſwered by the ſaid *T. P.* out of the monies by him agreed to be paid for the purchaſe of the ſaid bargained premiſſes, and which your oratrix doth hereby offer to allow to him, as ſo much paid on that account, that the ſaid *J. L.* and *J. L.* may be obliged, upon payment thereof, to join with your oratrix in granting and conveying to the ſaid *T. P.* and his heirs the ſaid bargained premiſſes, or otherwiſe ſo to reconvey the ſame to your oratrix free from all incumbrances done by them or either of them, or by the ſaid *J. L.* deceaſed; and ſo as thereby your oratrix may be enabled to execute the ſaid articles of agreement, and perform the true intent thereof on her part to be performed; and that the ſaid *T. P.* may either ſignify to your oratrix how and by what manner of conveyance or conveyances he will require, or his counſel ſhall adviſe, the ſaid bargained and ſold premiſſes to be granted and conveyed to him, or otherwiſe that he may be decreed to take and accept of a proper and ſufficient conveyance or conveyances thereof,

of, and to pay or cauſe to be paid unto your oratrix or her aſſigns the conſideration monies agreed by the ſaid *T. P.* to be paid for the purchaſe of the ſaid premiſſes, at ſuch days, and in ſuch manner, as in the ſaid articles of Agreement are mentioned in that behalf; and that your oratrix (who was always ready and willing, and doth hereby offer to perform and execute every thing in the ſaid articles contained on her part to be done and performed,) may receive ſuch further and other relief in the premiſſes as the nature of her caſe requires, and as ſhall be agreeable to equity and good conſcience. May it pleaſe your Lordſhip, *&c.*

Bill for a ſpecific performance of an agreement for the purchaſe of a leaſe.

HUMBLY complaining, ſheweth unto your Lordſhip, your orator *A. B.* of ——— in the county of——that *C. D.* of——in the county of——being, or pretending to be, poſſeſſed of a leaſehold meſſuage, tenement and garden, with the appurtenances, ſituate in——aforeſaid, which he held by a leaſe granted from *E. F.* of —— in the county of——for the term of 15 years, commencing from *Michaelmas* laſt, and he being willing and deſirous to ſell and aſſign over the ſaid term, your orator in or about the month of —— laſt (after ſeveral meetings had for that purpoſe) came to an agreement with the ſaid *C. D.* for the abſolute purchaſe of the ſaid leaſe, and all his intereſt therein; and which agreement was reduced into writing, and is in the words and figures following, (that is to ſay) *Auguſt* 4th——; *Memorandum*, it was this day agreed by and between *C. D.* of —— in the county of——and *A. B.* of the ſame place, that the ſaid *C. D.* ſhall, on or

before the 8th day of *August* inſtant, grant, bargain, ſell and aſſign over unto the ſaid *A. B.* all that meſſuage or tenement, and garden, with the appurtenances, except one cellar, now in the occupation of *H. P.* ſituate in —— in the county of ——— in *High-Street* there, and which was lately in the poſſeſſion of the ſaid *C. D.* and by him held by leaſe of *E. F.* Gent. for the term of 15 years, to commence from *Michaelmas* laſt, and the ſaid *A. B.* is, in conſideration of the ſum of 10 *l. per Annum*, to have the ſaid premiſſes for the remainder of the ſaid *C. D.*'s term, free from taxes and reparations: And the ſaid *C. D.* in conſideration of this agreement, hath received of the ſaid *A. B.* 2 *s.* 6 *d.* as in and by the ſaid memorandum or agreement, ſigned by the ſaid *C. D.* and your orator in the preſence of *W. D.* and *J. S.* now in your orator's cuſtody or power, ready to be produced, relation being thereunto had, may more fully and at large appear. And your orator further ſheweth unto your Lordſhip, that your orator was always ready and willing to perform his part of the ſaid agreement, and to have accepted an aſſignment of the ſaid leaſe purſuant thereto; and for that purpoſe your orator cauſed a common aſſignment of the ſaid leaſe to be drawn for the remainder of the ſaid term of 15 years, and which was to commence from the 29th day of *September* laſt, purſuant to the ſaid agreement, and tendered the ſame to the ſaid *D.* to be executed by him, and likewiſe your orator at the ſame time offered to execute a counter-part thereof: And your orator hath frequently, both by himſelf and others, both before and ſince ſuch tender and offer made, applied to the ſaid *C. D.* in a friendly manner, and requeſted him to deliver up the ſaid leaſe, and to execute the ſaid aſſignment as aforeſaid, and which your orator did not in the leaſt doubt but the ſaid

C. D.

C. D. would have done. **But now so it is,** may it please your Lordship, that the said *C. D.* combining and confederating to and with divers other persons, at present unknown to your orator, whose names when discovered, your orator prays may be herein inserted, and they made parties hereto, with apt words to charge them, endeavouring to wrong and injure your orator in the premisses; he the said *C. D.* peremptorily refuses to perform the said agreement, and to deliver up the said lease, and execute a proper assignment thereof to your orator, or to permit your orator to enter and take possession of the said messuage or tenement and premisses, pursuant to the true intent and meaning of the said agreement. **In tender consideration** whereof, and forasmuch as your orator is remediless in the premisses by the strict rules of the common law, and cannot compel a specific performance of the said agreement, but by the aid and assistance of this honourable court, where matters of this nature are properly cognizable and relievable; **To the end therefore,** that the said *C. D.* (and his confederates, when discovered,) may upon their corporal oaths, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here again repeated and interrogated; And more particularly that the said *C. D.* may set forth and discover whether he did not enter into such memorandum or agreement as herein before is mentioned, or any other, and what memorandum or agreement; and whether your orator hath not caused a common assignment of the said lease to be drawn, and tendered to him the said *C. D.* to be executed pursuant to the said agreement; and whether your orator hath not, since such tender made, by himself and others requested the said *C. D.* to execute

the ſaid aſſignment, and ſpecifically to perform the ſaid agreement; and whether he hath not refuſed ſo to do; and why, and for what reaſon; and that the ſaid *C. D.* may be compelled to a ſpecific performance of the ſaid agreement, and may execute a proper aſſignment of the ſaid leaſe, for the remainder of the ſaid term of 15 years yet to come and unexpired, to your orator, according to the true intent and meaning of the ſaid agreement; And that your orator may have the poſſeſſion of the ſaid eſtate and premiſſes; and that your orator may have ſuch other, and farther relief in all and ſingular the premiſſes, as to your Lordſhip ſhall ſeem meet; May it pleaſe your Lordſhip, *&c.*

A bill to revive and anſwer.

HUMBLY complaining, ſhew unto your Lordſhip, your orators *A. B.* of —— in the county of —— gentleman, *C. D.* late of —— aforeſaid, and late curate of —— in the county aforeſaid, now of —— in the county of —— clerk, *E. F.* of —— aforeſaid, and *G. H.* of —— in —— in the county aforeſaid, yeoman, adminiſtrators of all and ſingular the goods and chattels, rights and credits of *J. K.* late of —— in —— aforeſaid, deceaſed, with the laſt will or teſtamentary ſchedule of the ſaid *J. K.* annexed; That in or about *Eaſter* term, which was in the year of our Lord —— your orators exhibited their bill of complaint into this honourable court, againſt *A. B. L. M. N. O. P. Q.* and *R. S.* of —— aforeſaid, and *T. V.* for an account of the perſonal eſtate of the ſaid *J. K.* and for an *Injunction*, and to be relieved touching the ſeveral matters and things in the ſaid bill complained of. And your orators farther ſhew unto

unto your Lordſhip, that the ſaid defendants being duly ſerved with proceſs to appear to and anſwer the ſaid bill, they the ſaid defendants ſeverally appeared accordingly, and put in their anſwers thereto, and the *injunction* obtained by your orator in the ſaid cauſe was diſſolved; and thereupon your orators, in or about *Michaelmas* term —— obtained an order to amend their bill of complaint; and the ſame was amended accordingly againſt the ſaid defendants, and one *J. W.* was added a party thereto: And the ſaid defendants being all duly ſerved with proceſs to appear to and anſwer the ſaid amended bill, they ſeverally appeared accordingly, and put in their anſwers thereto; and the *injunction* granted upon exhibiting the ſaid amended bill, was (upon ſhewing cauſe) alſo diſſolved; as in and by the ſaid original and amended bill, anſwers, order, and other proceedings had in the ſame cauſe, and now remaining as of record in this honourable court, may more fully appear, and which your orators hereby crave leave to refer themſelves to: But before any farther proceedings were had in the ſaid cauſe, the ſaid *L. M.* departed this life, to wit, in or about the month of —— laſt paſt, whereby the ſaid ſuit as to him became and is abated; and your orators further ſhew unto your Lordſhip, that the ſaid *L. M.* did in his life-time duly make and publiſh his laſt will and teſtament in writing, and thereof conſtituted and appointed *E. M.* his wife ſole executrix, who duly proved the ſaid will in the proper eccleſiaſtical court, and poſſeſſed herſelf of all her ſaid teſtator's perſonal eſtate, more than ſufficient to pay his funeral expences and all his juſt debts; whereby the ſaid ſuit ought to be revived as againſt the ſaid *E. M.* his executrix, who now ſtands in his place and repreſents him; and your orators (as they are adviſed)

viſed) are intitled to have the ſame relief againſt her, with reſpect to the ſaid *L. M.* his perſonal eſtate, as they would have been intitled to againſt him, the ſaid *L. M.* had he been living; and ſhe ought to anſwer the premiſſes, and ought either to admit aſſets of the ſaid *L. M.* ſufficient to ſatisfy your orator's demands claimed by the ſaid original and amended bill, or ought to diſcover and account for his perſonal eſtate, as is uſual in ſuch caſes: **To the end therefore,** that the ſaid ſuit and all proceedings therein may ſtand revived, and be in the ſame plight and condition as they were at the time of the death of the ſaid *L. M.* and that your orators may have the benefit thereof; and that the ſaid *E. M.* may anſwer and ſet forth whether the ſaid *L. M.* did not make his laſt will and teſtament, and thereof did not appoint her the ſaid *E. M.* executrix, as herein before is ſet forth, and whether the ſaid *L. M.* did not depart this life at or about the time herein before ſet forth, or at or about what other time; and whether ſhe the ſaid *E. M.* did not prove the ſaid will in ſome and what eccleſiaſtical court, and poſſeſs herſelf of the ſaid *L. M.*'s perſonal eſtate; and that the ſaid *E. M.* may either admit aſſets of the ſaid *L. M.* come to her hands ſufficient to pay all his debts, funeral expences, and legacies, and alſo to anſwer your orator's demands; or if ſhe ſhall pretend that the ſaid *L. M.* did not leave a ſufficient perſonal eſtate for that purpoſe, then that ſhe may ſet forth an account of all debts ſhe pretends to be owing by her ſaid teſtator, and to whom, and for what, and upon what ſecurities; and that ſhe may likewiſe ſet forth a full, true and particular inventory and account of all and every the goods, chattels and other perſonal eſtate and effects which the ſaid teſtator *L. M.* was at his death poſſeſſed of, intereſted

intereſted in, or any ways intitled unto, with the nature, quantities, qualities, and full and utmoſt values thereof; and what part has come to her hands, or to the hands of any other perſon, and whom, for her uſe, or with her privity, conſent or procurement; and how the ſame has been paid, applied, adminiſtred, ſold, or diſpoſed of by her, or any other perſon, by her direction or privity, and when, and by and to whom, and for what; and that the ſaid *E. M.* may ſhew cauſe (if ſhe can) why the ſaid ſuit and proceedings thereon ſhould not ſtand and be revived; and that the ſame may be revived, May it pleaſe your Lordſhip, to grant unto your orators his Majeſty's moſt gracious writ of *ſubpœna* to revive and anſwer, iſſuing out of and under the ſeal of this honourable court, to be directed to the ſaid *E. M.* thereby commanding her at a certain day, and under a certain pain therein to be limited, perſonally to be and appear before your Lordſhip in this high and honourable court, then and there to anſwer the premiſſes, and to ſhew cauſe, if ſhe can, why the ſaid ſuit and proceedings therein had, ſhould not ſtand and be revived againſt her, and be in the ſame plight and condition, as they were at the time of the death of the ſaid *L. M.* and farther to ſtand to and abide ſuch order and decree in the premiſſes, as to your Lordſhip ſhall ſeem meet. And your orators ſhall ever pray, *&c.*

Bill of revivor brought by an adminiſtratrix to revive the ſuit wherein her huſband was plaintiff, who died pending the ſuit.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix *E. M.* of, *&c.* widow, relict and adminiſtratrix of the goods and chattels,

chattels, rights and credits of *F. M.* late of, *&c.* That the ſaid *F. M.* in or about *Hilary* term laſt paſt, did exhibit his bill of complaint into this honourable court againſt *F. R. &c.* defendants, thereby among other things ſetting forth, that [*Here recite the prayer of the original bill*] the ſaid complainant by his ſaid bill prayed the aid of this court, and that proceſs of *ſubpœna* might be awarded againſt the ſaid defendants to appear in this court and anſwer the premiſſes, which being granted, and the defendants therewith ſerved, they appeared accordingly; and the defendant *T. R.* anſwered, and [*Set forth what proceedings have been in the cauſe*] as by the ſaid bill, anſwer, *&c.* remaining as on record in this honourable court, relation thereunto being had, may more at large appear. **But ſo it is,** may it pleaſe your Lordſhip, that before any other proceedings were had in the ſaid cauſe, the ſaid *F. M.* died inteſtate, whereby the ſaid ſuit and proceedings became abated; ſince whoſe death letters of adminiſtration of the goods and chattels, rights and credits of the ſaid complainant have been granted to your oratrix, his widow, out of the prerogative court of *Canterbury*, by virtue whereof your oratrix is become intitled to the perſonal eſtate of the ſaid complainant her huſband. **To the end thereforе,** that the ſaid bill, anſwer, *&c.* ſo abated as aforeſaid, may ſtand revived againſt the ſaid defendants *T. R.* and *F. G.* and be in the ſame plight, ſtate and condition as the ſame were in at the time of the abatement thereof; May it pleaſe your Lordſhip to grant unto your oratrix his Majeſty's moſt gracious writ of *ſubpœna ad revivendum*, to be directed to the ſaid *T. R.* and *F. G.* thereby commanding them reſpectively at a certain day, and under a certain pain therein to be limited, perſonally to be and appear before

your

your Lordſhip in this honourable court, then and there to ſhew cauſe (if they can) why the ſaid proceedings ſo abated as aforeſaid ſhould not be revived, and be in the ſame plight, ſtate and condition as the ſame were in at the time of the abatement thereof; and your oratrix be further relieved in all, *&c.*

A ſupplemental bill to deliver up deeds and writings.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix, *A. B.* ſpinſter, one of the daughters of *J. B.* late of ——, yeoman, deceaſed, that your oratrix, together with *E. B.* her ſiſter, as they were two of the daughters and heirs at law of the ſaid *J. B.* their father, did on or about the —— day of ——— in the year of our Lord ———, exhibit their original bill of complaint in this honourable court againſt *N. T.* and *R. P.* and *M.* his wife as defendants, for an account of the rents and profits of the real eſtate of the ſaid *J. B.* in the ſaid bill mentioned, to one third part whereof ſhe was intitled, and alſo for an account of his perſonal eſtate, as he the ſaid *J. B.* died inteſtate, and your oratrix and the ſaid *E.* were two of his children, and your oratrix and the ſaid *E.* her ſiſter having ſuch title thereto reſpectively as in the ſaid bill is alledged; and that your oratrix might be let into a redemption of her father's real eſtate, upon paying what (if any thing) ſhould appear juſtly due, and for relief. And afterwards the ſaid original bill was amended, and the ſaid *E. B.* who had intermarried with *J. G.* and the ſaid *J. G.* were made defendants thereto, and the ſaid *E.*'s name was ſtruck out from being a party to the ſaid original bill, and the ſaid defendants being ſerved with proceſs

proceſs of *ſubpœna*, they did accordingly appear to and anſwer the ſaid amended bill, and the ſaid anſwers were replied unto, and iſſue being joined, ſeveral witneſſes were examined; but before publication was paſſed in the ſaid cauſe your oratrix hath diſcovered, and your oratrix by way of ſupplement doth now hereby charge, that the ſaid *N. T.* now or late had in his cuſtody or power, or at ſome time or times had ſeen or read ſome deed of ſettlement or writing, and particularly a deed bearing date in or about the year —— of and concerning the real eſtate of the ſaid *J. B.* the father, which ſaid deed of ſettlement, or ſome other deed or writing to ſuch purport or effect, was made on the marriage of the ſaid *J. B.* the father, with *A.* his firſt wife long ſince deceaſed, who was the ſiſter of the ſaid *N. T.* and thereby or by ſome other deed or writing the ſaid real eſtate of the ſaid *J. B.* or great or ſome part thereof, was ſo ſettled and limited, as that after the death of the ſaid *J. B.* the father, without iſſue by the ſaid *A.* the ſame was to be to the uſe of the iſſue or heirs of the body of the ſaid *J. B.* the father; and he the ſaid *J. B.* the father had iſſue only one child by the ſaid *A.* his wife (to wit) *J. B.* who died long ſince without iſſue and unmarried, but he the ſaid *J. B.* the father, by *E.* his ſecond wife, left iſſue three daughters (to wit) your oratrix and the ſaid defendants *M.* and *E.* and your oratrix and the ſaid *M.* and *E.* are now the heirs of the body of the ſaid *J. B.* the father, and intitled to the ſame by and under the ſaid deed of ſettlement, or other deed or writing as aforeſaid; and there happening ſome differences between the ſaid *J. B.* the father in his life-time, and the ſaid *N. T.* and there being a bill exhibited in this honourable court in relation thereunto, he the ſaid *N. T.* as

your oratrix hath lately, and ſince iſſue was joined as aforeſaid, diſcovered that he the ſaid *N. T.* did in his anſwer to the ſaid bill of the ſaid *J. B.* the father, admit that he had in his cuſtody ſeveral deeds and writings relating to or concerning the ſaid real eſtate, and particularly the ſaid deed of ſettlement made on the marriage of your oratrix's ſaid father with the ſaid *A.* in which he the ſaid *N. T.* was a truſtee; and he the ſaid *N. T.* did in and by the ſame anſwer to the ſaid bill of the ſaid *J. B.* the father declare and ſay, that in caſe the ſaid *J. B.* the ſon ſhould die without iſſue and under age, the lands ſettled on the iſſue of the ſaid *J. B.* the father's firſt marriage, would come to the ſaid *E.*'s children, as heirs of the body of the ſaid *J. B.* the father, as in and by the ſaid bill of the ſaid *B.* the father, and the ſaid *N. T.*'s anſwer thereunto, remaining as of record in this honourable court, doth and will more fully appear: But the ſaid deed of ſettlement, and the ſaid other deeds and writings, have been all along concealed from your oratrix, and he the ſaid *N. T.* as he was a truſtee named in the ſaid ſettlement, ought to have diſcovered and and delivered up the ſame unto your oratrix, and thereby it doth and will appear, that your oratrix and her ſaid ſiſters *M.* and *E.* are tenants in tail of and in the ſaid premiſſes, and that the ſame ought to be divided between them; and if the ſaid deed of ſettlement is not now to be produced, the ſame hath been fraudulently torn, burnt or deſtroyed, but how or when, or by whom, he the ſaid *N. T.* doth refuſe to diſcover. **To the end therefore,** that they the ſaid *N. T.* and *R. P.* and *M.* his wife, and *J. G.* and *E.* his wife, may anſwer all and every the matters and things herein before charged by way of ſupplement, and that he the ſaid *N. T.* may diſcover and ſet forth,

whether,

whether, as he knows or believes, he at any time, and when, and how long, had the ſaid deed of ſettlement in his cuſtody, or power, or any other, and what deed, paper or writings to the effect or purport herein before mentioned, and what is become of ſuch deed of ſettlement, and all other the deeds, papers and writings before mentioned, or any or either, and which of them, as he the ſaid *N. T.* knows or believes, and when he laſt ſaw the ſaid deed of ſettlement, or the ſaid other deeds, papers and writings, or any or either, and which of them; and that the ſaid deed of ſettlement, and the ſaid other deeds, papers and writings may be delivered up ſafe and uncancelled, and that your oratrix may be relieved in the premiſſes as the nature and circumſtances of her caſe ſhall require; May it pleaſe your Lordſhip, *&c.*

A bill of revivor, and ſupplemental bill.

HUMBLY complaining, ſhew unto your Lordſhip, your orators Sir *J. T.* of —— in the county of —— bart. and *T. P.* of —— in the ſaid county, Eſq; who are the ſurviving and only acting executors and truſtees named in the laſt will and teſtament of *H. P.* late of —— in the county of —— Eſq; deceaſed, That your orators did in or about *Trinity* term —— exhibit their bill of complaint into this honourable court againſt *F. S.* Eſq; *A. S.* Eſq; *W. S.* Eſq; Sir *E. S.* Bart. *W. P.* Eſq; formerly called *W. B.* Eſq; *W. F.* Eſq; *T. F.* Eſq; and *M.* his wife, late wife of the ſaid *H. P.* deceaſed, *H. G.* Eſq; and *W. P.* Gent. defendants (amongſt other things) for a diſcovery of the real and perſonal eſtate of the ſaid *H. P.* and in particular, what real eſtate he purchaſed after the date of his ſaid will, and for the directions of the court touching the truſts created

created by the ſaid *H. P.*'s ſaid laſt will and codicil; and the ſaid defendants being duly ſerved with proceſs for that purpoſe did appear to your orators ſaid bill, and the ſaid defendants *F. S. W. P. T. F.* and *M.* his wife, *H. G.* and *W. P.* put in their anſwers thereto; to which ſaid anſwers of the ſaid defendants *F. S. W. P. T. F.* and *M.* his wife, *H. G.* and *W. P.* your orators replied, and iſſue was thereon joined, and divers witneſſes were examined in the ſaid cauſe, and their depoſitions duly taken and returned, as by the ſaid bill, anſwers, replication and depoſitions of witneſſes, all of them remaining duly filed and of record in this honourable court, relation being thereunto had, may more fully and at large appear. And your orators further ſhew unto your Lordſhip, that before the ſaid defendants Sir *E. S. A. S.* and *W. S.* put in any anſwer to the ſaid bill, or the ſaid cauſe received a hearing, the ſaid *W. P.* died inteſtate on or about the —— day of —— and the ſaid *A. S.* alſo died on or about the —— day of —— in the year —— whereby the ſaid ſuit as to them became and is abated; and your orators further ſhew, that *J. P.* of —— Gent. hath taken out letters of adminiſtration to the ſaid *W. P.* out of the court of the archdeacon of ——— in the ſaid county of —— and your orators are thereby become intitled to have the ſaid ſuit and proceedings revived againſt the ſaid *J. P.* and to have the ſame benefit thereof, and relief againſt him as they ſhould or might have had againſt the ſaid *W. P.* (unleſs the ſaid *J. P.* can ſhew good cauſe to the contrary;) and the ſaid *J. P.* ought to admit aſſets of his ſaid Inteſtate come to his hands, to anſwer any demands your orators have againſt the eſtate of the ſaid *W. P.* or elſe to ſet forth a particular and true account of his ſaid inteſtate's eſtate, and how the ſame hath been applied and

diſpoſed

diſpoſed of. And your orators further ſhew (by way of ſupplement,) that the ſaid *H. P.* having contracted for or purchaſed the manors of ——— and —— and ——, and the manor-houſe called ——— and other lands and tenements thereunto belonging, which was and were formerly the eſtate of *T. B.* Eſq; it is pretended the ſame was ſo done after the date of the will and codicil, or ſome of them; and the ſaid Sir *E. S.* laying ſome claim thereto, it is alſo pretended that the ſaid Sir *E. S.* and *F. S.* conveyed their right and intereſt therein and thereto to the ſaid *A. S.* who, as is pretended, in his life-time duly made and publiſhed his laſt will and teſtament in writing, and therein and thereby deviſed part of the ſaid eſtate late of the ſaid *A. B.*'s to *J. G.* of —— in the county of —— Gent. and his heirs, or to *L. G.* wife of the ſaid *J. G.* and who was the ſaid *A.*'s ſiſter, and her heirs, or to the ſaid *L. G.* for her life, remainder to *A. G.* her ſon by the ſaid *J. G.* and his heirs; and other part of the ſaid late *A. B.*'s eſtate called *P.* to Mrs. *H. S.* another ſiſter of the ſaid *A. S.* and her heirs; and the other part of the ſaid eſtate, to wit, —— manor and lands to *M. S.* and *H. S.* his ſiſters, and whom, as it is alſo pretended, he made executrixes of his ſaid will, either to them and their heirs, or in truſt to pay his debts, the reſidue thereof, after payment of his debts, to the ſaid *W. S.* his brother and his heirs: And the ſaid Sir *E. S. W. S. H. S. J. G.* and *L.* his wife, and *A. G.* their ſon, *M. S.* and *K. S.* pretend ſome right or title in or to the ſaid lands and premiſſes late Mr. *B.*'s; yet they refuſe to diſcover what their ſaid claims are, or by what deed or title they claim, or who is in poſſeſſion thereof, and of every part thereof; and tho' your orators are adviſed, to the end it may be determined by this court, whether all or any part of the

the ſaid late Mr. *B.*'s ſaid manors, lands and eſtate is part of the truſt-eſtate intended to be ſettled by the ſaid *H. P.*'s will or codicils, and for that purpoſe the ſaid Sir *E. S.* ought to ſet forth what right or title he claims therein or thereto, or to any part thereof, if any; and for that purpoſe he ought to anſwer this bill, as well as your orators original bill; and the ſaid *W. S.* ought ſo to do, he claiming in reverſion under the ſaid *H. P.*'s will, as well as under the ſaid *A. S.*'s will; and the ſaid *H. S. J. G.* and *L.* his wife, *A. G.* their ſon, and *M. S.* and *K. S.* the executors of the ſaid *A. S.* ought alſo ſo to do, if they or either of them claim any right or title thereto, or intereſt therein, or in or to any part thereof. **To the end therefore,** that the ſaid Sir *E. S. W. S. H. S. M. S. K. S. J. G.* and *L.* his wife, and *A. G.* their ſon, may ſo do, and that the ſaid ſuit and proceedings may ſtand revived, and be in the ſame plight and condition as they were in at the time of the death of the ſaid *W. P.* or that the ſaid *J. P.* may ſhew cauſe to the contrary, and may admit aſſets of his ſaid inteſtate ſufficient come to his hands to anſwer your orator's demands; or may ſet out a particular, full and true account of his ſaid inteſtate's eſtate and effects, and how the ſame hath been paid, applied and diſpoſed of; May it pleaſe your Lordſhip, *&c.*

Plaintiffs pray proceſs to revive and anſwer.

Another bill of revivor.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix *S. B.* of —— in the county of —— widow, only ſiſter and heir at law of *T. B.* late of —— in the ſaid county, Gent. deceaſed, adminiſtrator of all and ſingular the goods

goods and chattels, rights and credits of the ſaid *T. B.* and alſo the aunt, heir at law of *M. B.* late of —— aforeſaid ſpinſter, deceaſed, who was the only daughter of the ſaid *T. B.* that your oratrix in or about *Michaelmas* term, which was in the year of our Lord —— exhibited her bill of complaint into this honourable court againſt *H. T. T. P. J. L. H B. J. B. S. B. E. D. D. S. E. R. A. S. E. P. D. H.* and *J. W.* (amongſt other things) to be relieved touching the matters therein contained, and to ſet aſide the pretended will of the ſaid *M. B.* and that the ſame might be delivered up to your oratrix to be cancelled, and that the defendants might releaſe all their right or pretence of right or title to the real or perſonal eſtate of the ſaid *M. B.* and might account for the rents and profits thereof, and that the ſaid confederates *S. P. H.* and *W.* might aſſign the terms in them veſted to ſuch truſtee or truſtees as your oratrix ſhould appoint. To which bill all the ſaid defendants (being ſerved with proceſs of *Subpœna*) appeared, and the ſaid *H. T. T. P. J. L. H. B. J. B. S. B. E. P. D. S. E. R. A. S. E. P. D. H.* and *J. W.* ſeverally put in their anſwers thereto, and your oratrix replied to all the ſaid defendants anſwers (except the anſwers of the ſaid defendants *P. H.* and *W.*) and rules were given to paſs publication, which was by order of this court enlarged to the firſt day of next *Eaſter* term —— but no witneſſes are yet examined, and the cauſe is ſet down to be heard before your Lordſhip, as in and by the ſaid bill, anſwers and proceedings thereupon had, remaining as of record in this honourable court, relation being thereunto had, may more fully and at large appear: And your oratrix further ſheweth unto your Lordſhip, that before any other proceedings were had in the ſaid cauſe, (that is to ſay) about the —— day of —— laſt

laſt the ſaid *A. S.* died, by means whereof the ſaid cauſe and proceedings therein as to him became and are abated. And your oratrix further ſheweth unto your Lordſhip, that the ſaid *A. S.* did in his life-time make his laſt will and teſtament in writing, dated on or about the 1ſt day of *May* —— and did thereof conſtitute and appoint *M. S.* of *M.* in the county of —— Eſq; his brother, ſole executor and reſiduary legatee, who hath ſince his ſaid brother's death duly proved the ſaid will, and accepted of the ſaid executorſhip, and your oratrix is thereby intitled to have the ſame benefit and relief againſt the ſaid *M. S.* as your oratrix ſhould or might have had againſt the ſaid *A. S.* **To the end therefore,** that the ſaid ſuit and proceedings may ſtand revived, and be in the ſame plight and condition againſt the ſaid *M. S.* as the ſame were at the death of the ſaid *A. S.* and that your oratrix may have the ſame benefit thereof, or that he the ſaid *M. S.* may ſhew good cauſe to the contrary; May it pleaſe your Lordſhip to grant unto your oratrix his Majeſty's moſt gracious writ or writs of *ſubpæna* to be directed to the ſaid *M. S.* thereby commanding him, *&c.*

A bill by an adminiſtratrix for an account; and to revive a decree, and carry it into execution.

HUMBLY complaining, ſheweth unto your Lordſhip, your oratrix *A. C.* widow and relict of *P. C.* late of——in the county of——Eſq; deceaſed, and mother, and adminiſtratrix of the goods and chattels, rights and credits of *P. C.* deceaſed, who was eldeſt ſon and heir of the ſaid *P. C.* your oratrix's late huſband, deceaſed, by your ſaid oratrix, That ſome time in or about the——

day of——your oratrix and *W. C.* the younger ſon of the ſaid *P. C.* your oratrix's ſaid late huſband deceaſed, by your ſaid oratrix, an infant then under the age of twenty-one years, (that is to ſay of the age of ———) by your ſaid oratrix, his mother and next friend, exhibited their bill of complaint in this honourable court againſt the ſaid *P. C.* as the eldeſt ſon and heir of the ſaid *P. C.* your oratrix's ſaid late huſband, by your ſaid oratrix, he being then an infant under the age of twenty-one years, *L. R. W. W. W. L.* and *G. C.* and *W. C.* younger brothers of your oratrix's ſaid late huſband, ſetting forth, (amongſt divers other matters and things,) that previous to the marriage of your oratrix with the ſaid *P. C.* your oratrix's ſaid late huſband deceaſed, the ſaid *P. C.* in conſideration of the ſaid marriage, and of your oratrix's marriage portion, by certain articles bearing date the —— day of —— and made or mentioned to be made between the ſaid *P. C.* of the one part, and the ſaid *W. L.* and your oratrix, of the other part, he the ſaid *P. C.* did thereby covenant for himſelf, his heirs, executors and adminiſtrators, immediately after the ſolemnization of ſuch marriage, to ſettle the manor of——— with the appurtenances, and divers other lands and hereditaments therein particularly mentioned, in the pariſhes of——and——in the ſaid county of—— to the uſe of himſelf for life, without impeachment of waſte; remainder to truſtees to ſupport contingent remainders; remainder to the uſe of the firſt and other ſons of him the ſaid *P.* on the body of your oratrix to be begotten, in tail male; with remainder to *L. C.* ſince deceaſed, brother of the ſaid *P. C.* and all others the brothers of the ſaid *P. C.* according to their ſeniority ſucceſſively in tail male, with remainders to the right heirs of the ſaid *P. C.* And alſo ſetting forth, that ſoon after

after the execution of the ſaid articles the ſaid marriage took effect, and that in *March* —— the ſaid *P. C.* your oratrix's ſaid late huſband died, leaving your oratrix his widow, and the ſaid *P.* ſince deceaſed, his eldeſt ſon, and the ſaid *W. C.* his only children by the ſaid marriage then living, having firſt duly made and publiſhed his laſt will and teſtament in writing, bearing date the —— day of —— and therein taking notice of his ſaid marriage articles, confirmed the ſame, ſave and except the uſes to his brother *G.* and his iſſue in tail, which he revoked, as therein is mentioned; and deviſed all his manors, houſes, meſſuages, rectories, advowſons, lands, tenements, and hereditaments, and the reverſion thereof, with all his eſtate therein, unto the ſaid *L. R.* and *W. W.* their heirs and aſſigns, in truſt for the performance of the ſaid marriage articles (ſave as before excepted) and for the intents and purpoſes therein, and in the ſaid will ſet forth; and particularly that the ſaid truſtees and the ſurvivor of them, and the executors of ſuch ſurvivor, ſhould have the ſole direction of all his real eſtate, to let and ſet the ſame, and receive the rents, iſſues and profits thereof, until one of his ſons ſhould attain the age of twenty-one years, and ſhould apply the rents and profits of all his real eſtate, ſave ſuch as ſhould be applied in the maintenance and education of his ſaid ſon *P. C.* or his younger ſon (in caſe he ſhould ſurvive him) for payment of all or part of the principal or intereſt of any mortgages or incumbrances upon his ſaid eſtate, or any part thereof, and made your oratrix ſole executrix of his ſaid will, who after his death duly proved the ſame, and took upon herſelf the burthen of the execution thereof; and further ſetting forth, and praying in and by the ſaid bill to be relieved as therein is prayed. And your oratrix further ſheweth

unto your Lordſhip, that the ſaid defendants, being ſerved with proceſs, did appear to and put in their ſeveral anſwers to your oratrix's ſaid bill, and the ſaid *L. R.* and *W. W. W. L. G. C.* and *W. C.* thereby ſeverally and reſpectively admitted, that ſuch articles were duly executed, and that ſuch marriage was had, and that the defendant *P. C.* ſince deceaſed, and the ſaid plaintiff *W. C.* were the only iſſue thereof; and that the ſaid teſtator died in *March* ——— having made ſuch will as aforeſaid, and thereof your oratrix ſole executrix; but the defendant *R.* denied he had received any of the rents and profits of the ſaid teſtator's eſtate ſince his death; but the defendant *W.* admitted that he had received the ſame, and ſubmitted to account as the court ſhould direct: And the ſaid *P. C.* the infant put in his anſwer to the ſaid bill, by *T. B.* his guardian, and thereby, (amongſt other things,) ſubmitted his intereſt in the premiſſes to the care and protection of the court. And your oratrix further ſheweth unto your Lordſhip, that the ſaid cauſe being thereupon at iſſue, and witneſſes examined on both ſides, the ſame came afterwards to be heard, to wit, the 20th day of *February* in the ſixth year of the reign of his preſent Majeſty King *George* the ſecond, before the then Maſter of the Rolls; and thereupon it was (amongſt other things) declared and decreed by his Honour, that the ſaid teſtator's will was well proved, and that the truſts thereof ought to be performed; and that the ſaid manor of *A.* and lands agreed to be ſettled by the ſaid marriage articles, were to go according to the limitations of the ſaid marriage articles, diſcharged of the ſaid teſtator's debts, and that Mr. ——— one of the Maſters of this honourable court ſhould take an account of the ſaid teſtator's debts and legacies, which were to be paid firſt out of the

the ſaid ſum of —— part of your oratrix's portion; and the reſidue thereof was to be raiſed and paid out of the rents and profits, or by ſale or mortgage of the ſaid teſtator's real eſtate, by the ſaid articles and will particularly appropriated for that purpoſe, with the approbation of the ſaid maſter; and any deficiency therein was to be made good out of the other part of the teſtator's real eſtate not in ſettlement to your oratrix; and that a fit and proper perſon ſhould be appointed to receive the rents and profits of all the ſaid teſtator's real eſtates; and the ſaid maſter was to ſee what was proper to be allowed for the maintenance of the defendant *P. C.* and the plaintiff *W.* his brother reſpectively, as well for the time paſt, as to come, and to ſtate the ſame to the court, whereupon ſuch further order ſhould be made as ſhould be juſt; and what was to be allowed for their reſpective maintenance, was to be paid to your oratrix their mother, out of the rents and profits of the ſaid eſtates ſo long as ſhe ſhould maintain them, and until further order of court to the contrary; and all other proper directions were given for the taking the ſaid account; as by the ſaid bill and anſwers, and the other proceedings in the ſaid cauſe, and the ſaid decretal order made upon the hearing thereof, remaining as of record in this honourable court may more fully and at large appear, and to which your oratrix humbly craves leave to refer herſelf. And your oratrix further ſheweth unto your Lordſhip, that after hearing the ſaid cauſe, and making the ſaid decree, to wit, in or about the month of *December* —— the ſaid defendant *P. C.* the eldeſt ſon and heir of the ſaid teſtator *P. C.* departed this life inteſtate, and without iſſue, as did alſo the defendant *W. W.* in or about the month of ——— by reaſon whereof your oratrix

unto your Lordſhip, that the ſaid defendants, being ſerved with proceſs, did appear to and put in their ſeveral anſwers to your oratrix's ſaid bill, and the ſaid *L. R.* and *W. W. W. L. G. C.* and *W. C.* thereby ſeverally and reſpectively admitted, that ſuch articles were duly executed, and that ſuch marriage was had, and that the defendant *P. C.* ſince deceaſed, and the ſaid plaintiff *W. C.* were the only iſſue thereof; and that the ſaid teſtator died in *March* ——— having made ſuch will as aforeſaid, and thereof your oratrix ſole executrix; but the defendant *R.* denied he had received any of the rents and profits of the ſaid teſtator's eſtate ſince his death; but the defendant *W.* admitted that he had received the ſame, and ſubmitted to account as the court ſhould direct: And the ſaid *P. C.* the infant put in his anſwer to the ſaid bill, by *T. B.* his guardian, and thereby, (amongſt other things,) ſubmitted his intereſt in the premiſſes to the care and protection of the court. And your oratrix further ſheweth unto your Lordſhip, that the ſaid cauſe being thereupon at iſſue, and witneſſes examined on both ſides, the ſame came afterwards to be heard, to wit, the 20th day of *February* in the ſixth year of the reign of his preſent Majeſty King *George* the ſecond, before the then Maſter of the Rolls; and thereupon it was (amongſt other things) declared and decreed by his Honour, that the ſaid teſtator's will was well proved, and that the truſts thereof ought to be performed; and that the ſaid manor of *A.* and lands agreed to be ſettled by the ſaid marriage articles, were to go according to the limitations of the ſaid marriage articles, diſcharged of the ſaid teſtator's debts, and that Mr. ——— one of the Maſters of this honourable court ſhould take an account of the ſaid teſtator's debts and legacies, which were to be paid firſt out of the

the ſaid ſum of —— part of your oratrix's portion; and the reſidue thereof was to be raiſed and paid out of the rents and profits, or by ſale or mortgage of the ſaid teſtator's real eſtate, by the ſaid articles and will particularly appropriated for that purpoſe, with the approbation of the ſaid maſter; and any deficiency therein was to be made good out of the other part of the teſtator's real eſtate not in ſettlement to your oratrix; and that a fit and proper perſon ſhould be appointed to receive the rents and profits of all the ſaid teſtator's real eſtates; and the ſaid maſter was to ſee what was proper to be allowed for the maintenance of the defendant *P. C.* and the plaintiff *W.* his brother reſpectively, as well for the time paſt, as to come, and to ſtate the ſame to the court, whereupon ſuch further order ſhould be made as ſhould be juſt; and what was to be allowed for their reſpective maintenance, was to be paid to your oratrix their mother, out of the rents and profits of the ſaid eſtates ſo long as ſhe ſhould maintain them, and until further order of court to the contrary; and all other proper directions were given for the taking the ſaid account; as by the ſaid bill and anſwers, and the other proceedings in the ſaid cauſe, and the ſaid decretal order made upon the hearing thereof, remaining as of record in this honourable court may more fully and at large appear, and to which your oratrix humbly craves leave to refer herſelf. And your oratrix further ſheweth unto your Lordſhip, that after hearing the ſaid cauſe, and making the ſaid decree, to wit, in or about the month of *December* —— the ſaid defendant *P. C.* the eldeſt ſon and heir of the ſaid teſtator *P. C.* departed this life inteſtate, and without iſſue, as did alſo the defendant *W. W.* in or about the month of ——— by reaſon whereof your oratrix

is adviſed, that the ſaid cauſe, and the proceedings and decree had therein, as to them the ſaid *P. C.* and *W. W.* became and are abated. And your oratrix further ſhews unto your Lordſhip, by way of ſupplement to her ſaid former bill, that upon the death of the ſaid teſtator *P. C.* the ſaid manor of *A.* and lands and premiſſes of *W.* agreed to be ſettled in and by the ſaid marriage articles, as therein and herein before is mentioned, and which were diſcharged by the ſaid decree from payment of the ſaid teſtator's debts as aforeſaid, did by virtue of the ſaid marriage articles, immediately upon the death of the ſaid *P. C.* your oratrix's late huſband, come to the ſaid *P. C.* as eldeſt ſon and heir of the ſaid marriage, and his heirs male, and that he became intitled to the rents and profits thereof from the death of his ſaid father to his own death, and upon his death the ſaid eſtates came to the ſaid *W. C.* the teſtator's ſaid ſecond ſon, and one of the defendants herein after named as tenant in tail by virtue of the ſaid articles; and your oratrix further ſheweth, that the ſaid *W. W.* was appointed receiver of the rents and profits of the ſaid teſtator's real eſtates purſuant to the ſaid decree, and, as your oratrix is informed, the ſaid *W. W.* till the time of his death, and the ſaid *L. R.* or one of them, not only received the rents and profits of the ſaid teſtator's real eſtate, ſubjected to the payment of his debts, but alſo of the ſaid ſettled eſtate which belonged only to the ſaid *P. C.* her ſon, and applied the ſame promiſcuouſly with the rents of the ſaid other eſtates in payment of the ſaid teſtator's debts and legacies, or for ſome other uſes and purpoſes for which the ſame were no ways applicable; and your oratrix further ſheweth, that the ſaid *W. W.* ſometime before his death duly made his laſt will and teſtament in

writing, and thereof appointed *C. B.* of *M.* in the ſaid county of *N.* Gentleman, and *R. H.* of the ſame place, Gent. executors, who have proved the ſame, and poſſeſſed themſelves of his perſonal eſtate; and ſince the deceaſe of the ſaid *W. W. L. L.* of ——— in the ſaid county of ——— Gentleman, hath been appointed receiver of the ſaid teſtator *P. C.*'s ſaid real eſtates; and your oratrix further ſheweth, that there was a great arrear of rents and profits due to the ſaid *P. C.* her ſon at the time of his deceaſe, for the ſaid manor of —— and the ſaid lands and premiſſes at —— agreed to be ſettled as aforeſaid, and then unreceived and in the hands of the ſeveral tenants, who held and rented the ſame, amounting to the ſum of —— and upwards, and that ſome part thereof ſince the deceaſes of the ſaid inteſtate *P. C.* and the ſaid *W. W.* hath been received by the ſaid *C. B.* by virtue of or under pretence of ſome order or direction for that purpoſe, and that the other part thereof hath been received by the ſaid *L. L.* the ſaid receiver, and the ſaid *L. R.* the ſaid ſurviving truſtee, or ſome or one of them, and which they the ſaid *C. B. L. L.* and *L. R.* pretend to have paid and applied towards the payment of his the ſaid *P. C.* the teſtator's mortgage, and other his debts due and payable out of the other part of his ſaid real eſtate, in the pleadings in the aforeſaid cauſe mentioned, contrary to the ſaid decree made upon the hearing thereof as aforeſaid; and your oratrix further ſheweth, that ſoon after the death of the ſaid *P. C.* her ſaid ſon, letters of adminiſtration were granted to her out of the prerogative court of *York*, and thereupon, and by virtue thereof, ſhe became well intitled to all and ſingular the rents and profits of the ſaid manor of *A.* and lands and premiſſes at *W.* received by the ſaid *W. W.* the ſaid late receiver,

ceiver, and the ſaid *L. R.* which accrued due for the ſame eſtates after the death of the ſaid teſtator *P. C.* or which were received by them after making the ſaid decree in the ſaid inteſtate's life-time, over and above his maintenance, and all the arrears thereof, which were in the hands of the tenants and unreceived, and due to the ſaid *P. C.* your oratrix's ſaid late ſon at the time of his death, and ought to have received the ſame, and to have had an account thereof, and the ſame ought to be diſtributed in moieties between your oratrix and her ſaid ſon *W.* as by the ſame letters of adminiſtration in the cuſtody or power of your oratrix and ready to be produced to this honourable court, may appear. And your oratrix humbly inſiſts, that by virtue of the ſaid letters of adminiſtration, your oratrix ſtands in the place of the ſaid *P. C.* her ſaid ſon deceaſed, as to the ſaid rents and profits received of his ſaid eſtate as aforeſaid in his life-time, and which were due to him and in arrear, and received as aforeſaid ſince his death, and thereupon is intitled to have the aforeſaid decree made upon the hearing of the ſaid cauſe revived and carried into execution, and to have the benefit of all the ſaid proceedings, in ſuch manner as this honourable court ſhall direct. And your oratrix further ſheweth, that they the ſaid *W. C.* her ſon, *C. B. R. H. L. L.* and *L. R.* have entered into a combination and confederacy how to defeat your oratrix of the ſaid moiety or half-part of the ſaid rents and profits of the ſaid manor of *A.* and lands and premiſſes at *W.* which were received by them the ſaid *W. W.* and *L. R.* in the life-time of the ſaid inteſtate *P. C.* over and above his maintenance, and which were due and in arrear to the ſaid inteſtate *P. C.* her ſaid ſon at the time of his death, and which have ſince his death been received by the ſaid *C. B. L. L.*

L. L. and *L. R.* or ſome of them, and to all which, and an account thereof, your oratrix is well intitled as aforeſaid; and thereupon the ſaid confederates, and eſpecially the confederates *C. B. R. H. L. L.* and *L. R.* refuſe to give your oratrix any account thereof, or to pay her the ſame; and they the ſaid *C. B.* and *R. H.* pretend that the ſaid *W. W.* did not leave aſſets ſufficient to anſwer and make good to your oratrix what he ſo received; and the ſaid *W. C.* pretends that he is intitled to the whole of the rents and profits of the ſaid manor of *A.* and the lands and premiſſes at *W.* which were received by the ſaid *W. W.* and *L. R.* in the life-time of the ſaid inteſtate *P. C.* over and above his maintenance, as alſo to the whole of the rents and profits which were in arrear and due to the ſaid inteſtate *P. C.* at the time of his death for the ſame, or that the ſame ought to be applied in diſcharge of the ſaid *P. C.* his late father, the teſtator's debts; whereas your oratrix doth expreſly charge as above, and that the ſaid *W. C.* was intitled to one moiety or half-part thereof only, and that your oratrix is well intitled as aforeſaid to the other moiety or half-part thereof; and your oratrix doth alſo inſiſt, that as the ſaid manor of *A.* and the lands and premiſſes at *W.* agreed to be ſettled as aforeſaid, were by the ſaid decree diſcharged from the payment of the ſaid teſtator *P. C.*'s debts, that therefore the ſaid rents and profits thereof, which were due to the ſaid inteſtate *P. C.* at the time of his death, and received as aforeſaid, ought not to go and be applied towards the payment thereof, but ought to be equally divided ſhare and ſhare alike, after juſt deductions and allowances made out of the ſame between your oratrix and him the ſaid *W. C.* her ſon. **In tender conſideration** whereof, and to the end that the

ſaid

ſaid confederates, and every of them, may anſwer all and ſingular the premiſſes herein before added by way of ſupplement, as fully, particularly and diſtinctly, as if the ſame were here again repeated and interrogated, and more eſpecially that the ſaid *C. B.* and *R. H. L. L.* and *L. R.* may ſet forth a true and juſt account of all and ſingular the rents and profits of the ſaid manor of *A.* and lands and premiſſes at *W.* which they the ſaid *W. W.* and *L. R.* or either of them, or which any other perſons by their, or either of their order, or for their or either of their uſe, did receive in the life-time of the ſaid inteſtate *P. C.* and alſo a juſt and true account of the arrears thereof due to him the ſaid inteſtate at the time of his death, and which ſince his death have been received by the ſaid *C. B. L. L.* and *L. R.* or any of them, or any other perſon or perſons by their, or any of their order, for their or any of their uſe or uſes, ſeparately and diſtinctly in each and every of the ſaid years they ſo received the ſame; and how much they deducted, paid, or allowed out of the ſame in each and every of the ſaid years, ſeparately and diſtinctly, and for what, and upon what account, and how much the ſame amounts unto in the whole after ſuch deductions, and how and in what manner, and to and for whoſe uſe and benefit they paid and applied the ſame, or otherwiſe diſpoſed thereof; and that the ſaid *C. B.* and *R. H.* may either admit aſſets of their ſaid teſtator ſufficient to anſwer your oratrix's demand upon the ſaid *W. W.*'s eſtate, or elſe that they may ſet out a true and perfect inventory and particular of all and ſingular his goods, chattels, rights and credits, and how the ſame hath been paid, applied or otherwiſe diſpoſed of; and that the ſaid confederates may ſet forth, whether your oratrix hath

not

not ſince the death of the ſaid *P. C.* her ſaid ſon, taken out letters of adminiſtration to all and ſingular his goods, chattels, rights, credits and perſonal eſtate whatſoever; and whether your oratrix is not well intitled to have a juſt account of the ſaid rents and profits, and in her own right intitled to one full undivided moiety or half-part of all and ſingular the ſaid rents and profits of the ſaid manor of *A.* and the lands and premiſſes at *W.* received by the ſaid *W. W.* and *L. R.* during the life-time of the ſaid inteſtate *P. C.* over and above his ſaid maintenance, and all the arrears thereof which were due and in arrear to him the ſaid inteſtate *P. C.* at the time of his death; and that they the ſaid *C. B. R. H. L. L.* and *L. R.* may ſet forth their reaſons why they refuſe to account with and pay to your oratrix the ſame; and that they may be compelled forthwith to come to a juſt and fair account with your oratrix, and to pay to your oratrix what ſhall appear to be due to her upon ſuch account; and that the ſaid decree may be revived and carried into execution; and that your oratrix may have the benefit of all the aforeſaid proceedings and decree, in ſuch manner as this honourable court ſhall direct; May it pleaſe your Lordſhip, *&c.*

An information by the attorney general, at the relation of the rector and churchwardens for money given to charitable uſes.

To the Right Honourable, &c.

INforming ſheweth unto your Lordſhip, *J. W.* Eſq; his Majeſty's attorney general, at and by the relation of *G. W.* clerk, rector of the pariſh of *R.* in the county of *S.* and of *W. P.* and

and *G. E.* church-wardens of the ſame pariſh, on behalf of themſelves and the reſt of the pariſhioners and inhabitants of the ſame pariſh, That *H. F.* late of *W.* in the ſaid county of *S.* bart. deceaſed, in his life-time, and at the time of his death, was ſeiſed in fee-ſimple of and in divers manors, meſſuages, farms, lands, tenements and hereditaments, ſituate and being within the county of *K.* and the ſeveral counties of *K. E.* and *S.* or ſome of them, or elſewhere within that part of *Great Britain* called *England*, and the ſaid Sir *H. F.* was alſo poſſeſſed of, intereſted in or intitled to a very conſiderable perſonal eſtate, and being minded to diſpoſe of great part of his eſtate for ſeveral charitable purpoſes, he the ſaid Sir *H. F.* did ſome time before his death duly make and publiſh his laſt will and teſtament in writing, bearing date the —— day of ——— in the year of our Lord —— and did thereby nominate and appoint Sir *W. T.* Bart. *C. S. A.* Eſq; the reverend Mr. *A. D. T. G.* and *C. W.* of —— Eſq; his executors, in truſt for the performance of his ſaid will, and thereby gave and deviſed all, *&c.* [*Here recite the deviſes in the will*] as by the ſaid will, could his Majeſty's attorney general or the ſaid relators produce the ſame, might more fully appear. And his Majeſty's ſaid attorney general by the relation aforeſaid further ſheweth, that the ſaid will of the ſaid Sir *H. F.* was duly ſigned, ſealed, publiſhed and declared by the ſaid teſtator as and for his laſt will and teſtament, in the preſence of, and atteſted by, three credible witneſſes; and the ſaid teſtator, at the time of the date and execution of the ſaid will was of ſound and perfect memory and underſtanding; and he the ſaid teſtator on or about the —— day of ——— now laſt paſt departed this life without iſſue, and without altering or revoking his ſaid

ſaid will, and was at the time of his death poſſeſſed of, intereſted in or intitled to a very great and conſiderable real and perſonal eſtate, which perſonal eſtate amounted to the value of ——— and upwards, and was ſufficient to pay and ſatisfy all his debts and legacies, and funeral expences, with a great overplus. And his majeſty's ſaid Attorney General by the relation aforeſaid further ſheweth, that ſoon after the ſaid teſtator's death the ſaid executors and truſtees proved the ſaid will in the prerogative court of *Canterbury*, and have taken upon themſelves the burthen and execution thereof, and have poſſeſſed themſelves of all or the greateſt part of the goods, chattels and perſonal eſtate of their ſaid teſtator, and ought to exhibit a true and perfect inventory and particular thereof, and alſo an account in what manner they have paid, adminiſtred, diſpoſed of or applied the ſame, and to whom, and in payment of what debts and legacies; and they the ſaid truſtees and executors ought alſo with all convenient ſpeed to build, erect and endow the ſaid church or chapel and charity ſchool, according to the direction of the ſaid will, and in all other things to perform and execute the pious and charitable intentions and directions of the ſaid teſtator, according to the true intent and meaning of his ſaid will. **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid executors and truſtees Sir *W. T. C. S. A. T. J.* and *C. W.* combining and confederating with *F. J.* and *M.* and alſo with *G. T.* the younger, and *H. T.* of *J.* in the county of —— *G. T.* of, *&c.* and *R. T.* of, *&c.* and *S. K.* of, *&c.* who are the couſins and heirs at law of the ſaid teſtator Sir *H. F.* the ſaid *G. T.* the younger, and *H. T.* being the only ſons and heirs in gavelkind of *H. T.* Eſq; deceaſed, who was the eldeſt ſon and one of the coheirs in gavelkind, and the ſaid *G. T.* and *R. T.* being

being the youngeſt ſons and the other coheirs in gavelkind of *E. T.* deceaſed, late wife of *H. T.* of *J.* aforeſaid, Eſq; and the ſurviving daughter of *E. L.* alſo deceaſed, late wife of *W. L.* Eſq; deceaſed, only ſiſter and heir of *A. L.* ſon and heir of the ſaid *E. L.* which ſaid *E. L.* was one of the two ſiſters of *W. F.* the elder, late of *W.* aforeſaid, deceaſed, late father of the ſaid Sir *H. F.* and the ſaid *S. K.* the only ſurviving daughter and heir of *M. S.* late wife of *K. S.* late of *E. G.* in the pariſh of *S.* in the county of *K.* Gent. deceaſed, which ſaid *E. S.* was the other ſiſter of the ſaid *W. F.* the elder; and the ſaid *J. B.* only daughter and heir of *M. B.* deceaſed, late wife of *C. B.* Eſq; who was the only daughter and heir of *W. F.* the younger, deceaſed, who was the eldeſt ſon of the ſaid *W. F.* the elder by —— his firſt wife, and brother of the half blood of the ſaid teſtator, together with divers other perſons unknown to his Majeſty's ſaid Attorney General or the ſaid relators, whoſe names when diſcovered, his Majeſty's ſaid Attorney General prays they may be inſerted in this information, and they made parties to the ſame with apt words to charge them; they the ſaid executors pretend and give out in ſpeeches ſometimes, that the ſaid teſtator did not leave aſſets ſufficient to pay all his juſt debts, legacies and funeral expences, and alſo to make good the ſaid ſeveral charities and charitable donations given and directed in and by his ſaid will; whereas his Majeſty's Attorney General charges, that the ſaid teſtator died poſſeſſed of a very conſiderable perſonal eſtate, which, if rightly applied, and duly improved, will be much more than ſufficient to ſatisfy all the teſtator's debts, legacies and funeral expences; and particularly his Majeſty's Attorney General charges, that the ſaid executors, or ſome of them, were indebted upon bond

bond or otherwiſe to the ſaid teſtator at his death in very great ſums of money, which ought to be paid in and applied towards payment of the ſaid teſtator's debts and legacies; but they refuſe or neglect to pay in the ſaid debts, and ſuch of them as are ſo indebted ſometimes give out, that their debts are extinguiſhed by the ſaid teſtator having made them executors of his will, and that they are not now liable to the payment thereof; whereas they well know, and ſo his Majeſty's Attorney General and the ſaid relators inſiſt, that the ſaid executors are only appointed executors in truſt for the performance of the teſtator's will, and that it never was the teſtator's intention, by making them executors, to extinguiſh any debt or debts which any of them might owe him at the time of his death, and that he or they ſhould retain the ſame to their own uſes, nor is there any colour for them to ſet up any ſuch pretence; and as to the pretence, that the ſaid teſtator's perſonal eſtate is not ſufficient to ſatisfy all his debts, legacies and funeral expences, his Majeſty's Attorney General and the ſaid relators do alſo inſiſt, that in caſe there ſhall appear to be any ſuch deficiency of the ſaid teſtator's perſonal eſtate, the ſame ought to be made good out of his real eſtate, he having by his ſaid will expreſly deviſed all manors, lands and real eſtate whatſoever, to his ſaid executors and truſtees, and their heirs, to the uſes and upon the truſts mentioned in his ſaid will, and thereby, as his Majeſty's Attorney General and the relators inſiſt, he has ſubjected all his ſaid real eſtate to the payment of his ſaid legacies, and particularly of the ſaid charities; but then it is pretended by the ſaid *G. T.* the younger, and *H. T.* the grandſons, *G. T. R. T.* and *S. K.* the heirs at law, that the ſaid teſtator's real eſtate is deſcended upon them, and that the ſaid will was not duly executed, as by

law it ought to be, for the deviſing of lands and tenements, or at leaſt that it will be incumbent upon his Majeſty's Attorney General and the ſaid relators, to make due proof of the execution thereof; at other times it is pretended by the ſaid executors, that the ſaid teſtator having by his ſaid will directed, that his truſtees ſhould not apply any money ariſing from his eſtates given to his ſaid charities in the ſaid pariſh of *R.* either to a miniſter, ſchoolmaſter, or poor children, until ſeven years were expired after his deceaſe, his Majeſty's Attorney General and the ſaid relators ought not to make any demands upon them the executors until after the expiration of the ſaid ſeven years; whereas the ſaid executors well know, that the ſaid teſtator has declared his will to be, that his truſtees might at any time after his deceaſe erect and build the ſaid church or chapel, and ſchool-houſe, or either of them; and therefore they the ſaid executors ought, as ſoon as may be, to purchaſe a proper piece of ground, whereon to erect the ſaid church or chapel, and to ſet about the building the ſame with all convenient ſpeed; and they ought to come to an account for the ſaid teſtator's perſonal eſtate, and a ſufficient part thereof ought to be appropriated and ſet apart for anſwering and making good the ſaid teſtator's other charities, when the ſaid ſeven years ſhall be expired, and ſo the ſaid executors ſometimes admit; but then they pretend they are unwilling to act in any matter relating to the ſaid charities without the direction and indempnity of the decree of this honourable court; and the ſaid *F. J.* and *M.* his wife, do alſo inſiſt, that in regard the ſaid teſtator having by his ſaid will directed, that his executors and truſtees ſhall maintain and keep up his gardens belonging to his ſaid capital meſſuage at *S.* they the ſaid executors ought out of the ſaid teſtator's

perſonal

perſonal eſtate to pay and expend what the ſaid *F. J.* and his wife ſhall think fit to lay out and expend from time to time in and about the ſaid gardens and paddock; whereas the ſaid teſtator has only directed, that 20*l.* a year ſhall be paid to the ſaid *J. C.* the teſtator's gardener, for looking after the ſaid garden and paddock, and no greater ſum ought to be paid by the ſaid truſtees for keeping up the ſaid gardens, than the ſaid 20*l.* a year, and ſuch yearly ſum, his Majeſty's Attorney General and the relators inſiſt ought to be paid out of that part of the ſaid teſtator's real eſtate, which is deviſed to the ſaid *M. J.* but the ſaid *F. J.* and his wife inſiſt, that the charges of keeping up the ſaid gardens ſhall be paid out of the ſaid teſtator's perſonal eſtate, and not out of any part of his real eſtate deviſed to her, to the great prejudice and diminution of the ſaid charities. **In conſideration whereof,** and foraſmuch as charitable bequeſts and donations can only be effectually eſtabliſhed and ſpecifically carried into execution by the aid and aſſiſtance of a court of equity: **To the end therefore,** that the ſaid confederates may, upon their reſpective corporal oaths, true and perfect anſwer make to all and ſingular the premiſſes, as fully and diſtinctly as if the ſame were here again particularly repeated and interrogated, and eſpecially may ſet forth and diſcover, as they reſpectively know or believe, whether the ſaid Sir *H. F.* did not make his laſt will and teſtament in writing, and thereby make ſuch deviſes or to ſuch effect as are herein before ſet forth; and whether the ſaid will was not duly executed by the ſaid Sir *H. F.* in the preſence of, and atteſted by, three credible witneſſes, and who by name; and may ſet forth the ſame in the very words thereof; and whether the ſaid Sir *H. F.* did not die without iſſue, and when he died; and that the ſaid de-

fendants, the truſtees and executors, may ſet forth a particular of all the manors, meſſuages, lands, tenements and hereditaments, which the ſaid teſtator was any ways intitled to at the time of his death; and what eſtate or intereſt he had therein, and the yearly values thereof, and where the ſame are reſpectively ſituate, lying and being; and whether they have not proved the ſaid teſtator's will, and taken upon themſelves the burthen and execution thereof; and that they may ſet forth a true inventory and particular of all the goods, chattels and perſonal eſtate not ſpecifically deviſed, whereof the ſaid teſtator was poſſeſſed, intereſted in or intitled unto at the time of his death, and the true values thereof, and what part thereof hath come to the poſſeſſion of them the ſaid executors or either of them, or of any other perſon or perſons for their or either of their uſe; and how and in what manner, and in payment of what debts or legacies, and to whom, the ſame or any, and what part or parts thereof, or the monies ariſing by the ſale of any part thereof, hath been paid, applied, diſpoſed of or adminiſtred; and whether the ſame is not ſufficient fully to diſcharge and ſatisfy all his juſt debts and legacies, and funeral expences, and alſo the ſaid charitable bequeſts and donations in the ſaid will; and that they may alſo ſet forth, whether they or ſome, and which of them, were not indebted to the teſtator at the time of his death in any and what ſums of money, and how the ſame were ſecured; and that the ſaid *F. J.* and *M.* his wife may ſet forth the yearly value of the ſaid meſſuages, lands and tenements deviſed to her the ſaid *M.* by the ſaid teſtator's will, and that the ſaid executors may come to an account for the ſaid teſtator's perſonal eſtate, and may thereout pay the ſaid legacy of 50 *l.* bequeathed to the ſaid pariſh of *R.* to the church-wardens and overſeers

ſeers of the poor of the ſame pariſh for the purpoſes in the ſaid will mentioned concerning the ſame; and that the ſaid executors may alſo lay out and apply the ſum of 1500 *l.* in the erecting and building a chapel or church and a charity-ſchool in or near *C.* and *A.* aforeſaid, according to the ſaid teſtator's will, and in purchaſing a proper piece of ground whereon to build the ſame; and may alſo inveſt and lay out the ſeveral ſums of 4000 *l.* 500 *l.* and 3000 *l.* in the purchaſe of lands of inheritance, according to the teſtator's will, for the ſeveral purpoſes therein mentioned; and that in the mean time the ſaid ſeveral ſums, and all the reſt of the ſaid teſtator's perſonal eſtate not ſpecifically deviſed, over and above what ſhall be ſufficient to pay and ſatisfy all the teſtator's debts, legacies and funeral expences, may be placed out upon good ſecurities at intereſt, for the augmentation of the ſaid charities, and that the witneſſes to the ſaid will may be examined, and their teſtimony perpetuated; and that the ſaid ſeveral charities and charitable donations may be ſettled and eſtabliſhed, and all the truſts in the ſaid teſtator's will be fully performed and carried into execution, according to the true intent and meaning of the ſaid will; and that ſuch further and other relief may be had and obtained in the premiſſes, as to your Lordſhip ſhall ſeem agreeable to equity and good conſcience; May it pleaſe your Lordſhip, *&c.*

Another information by the Attorney General for money given to charitable uſes.

To the Right Honourable, &c.

Information filed, &c.

INforming ſheweth unto your Lordſhip, Sir ——— Knight, his Majeſty's Attorney General, at and by the relation of *F. W.* clerk, vicar of the pariſh of —— in the county of —— and *J. B.* and *J. C.* churchwardens of the ſame pariſh, for and on the behalf of, *&c.* (as in the laſt information *p.*) That *W. B.* late of ——— in the ſaid county of ——— Eſq; deceaſed, being in his life-time poſſeſſed of a conſiderable perſonal eſtate, did on or about the —— day of ——— which was in the year of our Lord 17 duly make and publiſh his laſt will and teſtament in writing, and thereby (among other things) gave and bequeathed the ſum of 500 *l.* to be raiſed out of his perſonal eſtate, and directed that the ſame ſum (when raiſed) ſhould be paid unto *T. W.* of, *&c.* and *J. B.* of, *&c.* their executors and adminiſtrators, on truſt to be by them the ſaid *T. W.* and *J. B.* their executors or adminiſtrators (with all convenient ſpeed) laid out part in building of a ſmall ſchool-houſe in the village of ——— in the pariſh aforeſaid, together with a little houſe adjoining thereto, for a ſchoolmaſter to live in, and directed that the purchaſe of the ſaid ground and building ſhould not exceed the ſum of 200 *l.* and that the remaining 300 *l.* ſhould be laid out in the purchaſe of land or ſome real ſecurity, to be a maintenance and proviſion for the maſter of the ſaid intended ſchool, and the building of the ſaid ſchool and ſchool-houſe for the maſter, and alſo the placing out of the ſaid 300 *l.* for the maintenance of the ſaid

ſaid maſter as aforeſaid, was to be done by the advice and aſſiſtance of the proprietor of *L.* and the vicar and churchwardens of the ſaid pariſh of ——— for the time being or any two of them, the proprietor of *L.* or the vicar of the ſaid pariſh of ——— to be one; in which ſchool the ſaid teſtator directed, that ſo many boys of poor farmers, labourers and craftſmen, of the ſaid village and pariſh of ——— aforeſaid, ſhould be taught to read and write, and to continue ſo long at or in the ſaid ſchool, as the ſaid proprietor of *L.* the vicar and churchwardens of the ſaid pariſh of ——— or any two of them for the time being, ſhould under their hands direct or appoint; And the ſaid teſtator alſo directed, that the ſaid ſchoolmaſter ſhould be choſen by the majority of the veſtry of the ſaid pariſh, the ſaid maſter having been firſt examined by, and approved of, by the vicar of the ſaid pariſh of ——— for the time being, as a proper perſon to be choſen maſter of the ſaid ſchool, and that upon any miſdemeanor of the maſter of the ſaid ſchool, the veſtry of the ſaid pariſh of ——— ſhould be called (the vicar and the churchwardens of the ſame pariſh for the time being, or any two of them, to be preſent) to examine into the ſame; and in caſe the maſter of the ſaid ſchool ſhould be found guilty of any miſdemeanor relating to the ſaid ſchool, that then the majority of the veſtry of the ſaid pariſh of ——— (the proprietor of *L.* and the vicar and churchwardens of the ſame pariſh of ——— for the time being, or any two of them being preſent) ſhould proceed to remove and diſplace the ſaid maſter from the ſaid ſchool, and ſhould proceed to elect and nominate (in the manner aforeſaid) another maſter to ſucceed him ſo removed and diſplaced; And his Majeſty's Attorney General, by the relation aforeſaid, further ſheweth unto

your Lordſhip, that the ſaid teſtator did in and by his ſaid will give to the poor of —— the ſum of 100*l.* to be raiſed out of his perſonal eſtate, and to the poor of the pariſh of —— the ſum of 100*l.* to be alſo raiſed out of his perſonal eſtate, whereof 100*l.* was to be paid by *E. B.* (the ſaid teſtator's executrix, and a defendant herein after named) to the churchwardens for the time being, of the reſpective pariſhes of —— and —— to be by them the ſame churchwardens (by and with the conſent of the miniſter and vicar of each pariſh for the time being) placed out at intereſt; and the ſaid teſtator did by his ſaid will direct, that the miniſter and vicar, and churchwardens of the ſaid reſpective pariſhes of —— and —— or any two of them (the miniſter and vicar of each pariſh to be one) ſhould diſtribute yearly, two days before *Chriſtmas day*, the produce and intereſt that ſhould ariſe from the ſaid 100*l.* among ten of ſuch indigent and labouring families of each of the ſaid pariſhes of —— and —— as they ſhall judge to be moſt wanting of it; and of his ſaid will the ſaid teſtator appointed his wife *E. B.* executrix; And his Majeſty's Attorney General, *&c.* ſheweth unto your Lordſhip, that the ſaid *W. B.* by a codicil to his ſaid will, bearing date the —— day of —— 17 appointed *L. R.* of, *&c.* a truſtee for the purpoſes in his ſaid will mentioned together with *T. W.* and *J. B.* the other truſtees in the ſaid will named, as by the ſaid will and codicil, could his Majeſty's Attorney General or the relators produce the ſame, might more fully appear; And his Majeſty's Attorney General, *&c.* further ſheweth unto your Lordſhip, that the ſaid *W. B.* at the time of the date and execution of the ſaid will, was of ſound mind, memory and underſtanding, and that the ſaid *W. B.* ſome time

time after making his will and codicil as aforeſaid *(viz.)* on or about the day of —— in the year of our Lord 17 departed this life without revoking or altering his ſaid will (ſave only as to the nomination of the ſaid *L. R.* to be a truſtee as aforeſaid) and that upon the death of the ſaid teſtator, the ſaid *E. B.* proved the ſame in, *&c.* and took upon her the burthen of the execution thereof; And his Majeſty's Attorney General at, *&c.* further ſheweth unto your Lordſhip, that the ſaid *W. B.* at the time of his death was poſſeſſed of, and intitled unto a conſiderable perſonal eſtate, conſiſting of leaſehold meſſuages, *&c.* to the amount of *l.* or to ſome other conſiderable amount ſufficient to pay and ſatisfy all his juſt debts, legacies, and funeral expences with a great overplus; And his Majeſty's Attorney General at, *&c.* further ſheweth unto your Lordſhip, that the ſaid *E. B.* after the death of the ſaid *W. B.* not only got into her hands, cuſtody or power, all or the greateſt part of his perſonal eſtate, ſufficient to pay all his debts, legacies, and funeral expences, with a conſiderable overplus, but alſo entred upon his freehold eſtate called *L.* and is the proprietor thereof for the time being, and the ſaid *F. W. &c.* (all the relators) have oftentimes in a friendly manner applied to the ſaid *E. B.* to pay to the ſaid *L. R. &c.* (the truſtees) the ſaid 500 *l.* to be by them applied to the purpoſes mentioned in the ſaid will of the ſaid *W. B.* and to aſſiſt them in carrying the charitable purpoſes of the ſaid teſtator into execution; And his Majeſty's Attorney General at, *&c.* further ſheweth unto your Lordſhip, that the ſaid *F. W. &c.* (the relators) have oftentimes applied to the ſaid *E. B.* to pay to them the ſaid 100 *l.* ſo directed by the ſaid teſtator's will to be paid to them as aforeſaid, in order to apply the ſame according

according to the ſaid teſtator's will, but the ſaid *E. B.* always refuſed and ſtill refuſes ſo to do, and the ſaid *L. R. &c.* (the truſtees) refuſe to act in the ſaid truſt repoſed in them in and by the ſaid will, altho' often applied to by the ſaid *F. W. &c.* (the relators) for that purpoſe: **But now ſo it is,** may it pleaſe your Lordſhip, that the ſaid *E. B. &c.* combining and confederating to and with divers perſons, to his Majeſty's ſaid Attorney General or the ſaid relators unknown, whoſe names when diſcovered, his Majeſty's ſaid Attorney General prays may be inſerted in this information with apt words to charge them, the ſaid *E. B. &c.* now pretend and give out that, *&c. (Here go on with the charge)* All which actings, doings and pretences of the ſaid *E. B. &c.* and their confederates are contrary to all right, equity and good conſcience, and tend to the great prejudice and diminution of the ſaid charities: **In conſideration whereof,** and for as much as charitable bequeſts and donations can only be effectually eſtabliſhed, and ſpecifically carried into execution, by the aid and aſſiſtance of a court of equity; **To the end therefore,** that the ſaid *E. B. &c.* (and their confederates) as diſcovered, may upon their ſeveral corporal oaths true and perfect anſwer make to all and ſingular the premiſſes, as if the ſame were here again repeated and interrogated, and more eſpecially, that the ſaid *E. B. &c.* may ſet forth and diſcover (as they reſpectively know or believe) whether the ſaid teſtator did not make ſuch will and codicil in writing of ſuch dates as aforeſaid, and thereby make ſuch deviſes or to ſuch effect as are herein before ſet forth, and whether the ſaid *W. B.* did not depart this life without revoking his ſaid will and codicil, and whether the ſaid *W. B.* did not appoint the ſaid *E. B.* ſole executrix of the ſaid will,

will, and whether ſhe hath not proved the ſame, and in what court, and if ſhe did not poſſeſs herſelf of the ſaid teſtator's perſonal eſtate, and whether the ſame was not more than ſufficient to pay all the teſtator's juſt debts, legacies and funeral expences, and whether ſhe is not proprietor or owner of *L.* and that the ſaid *E. B.* may admit aſſets ſufficient to pay the ſaid charitable legacies, and that the ſaid truſts in the ſaid will relating to the ſaid charities may be carried into execution, under the directions of this honourable court, and that the ſaid *L. R. &c.* (the truſtees) may act in, or aſſign their truſt, and that the ſaid *E. B.* may pay to them, or to ſuch perſons as this honourable court ſhall direct, the ſaid 500*l.* and intereſt for the ſame from the time ſhe laſt paid the ſame, to be applied to the charitable purpoſes mentioned in the will of the ſaid *W. B.* and alſo may pay to the ſaid *J. B.* and *J. C.* the preſent churchwardens of the ſaid pariſh of ——— the ſaid 100*l.* and intereſt for the ſame from the time ſhe the ſaid *E. B.* laſt paid the ſame, to be applied to the ſaid charitable purpoſes mentioned in the ſaid *W. B.*'s ſaid will, and that ſuch further and other relief may be had and obtained in the premiſſes, as to your Lordſhip ſhall ſeem agreeable to equity and good conſcience; May it pleaſe, *&c.*

The

The anſwer of the executrix to the laſt information, wherein ſhe inſiſted upon the Stat. of the 9 Geo. 2. *intitled an act to reſtrain the diſpoſitions of lands, whereby the ſame become unalienable.*

The anſwer of E. B. *widow, one of the defendants, to the information exhibited by or in the name of* ——— *his Majeſty's Attorney General, by and at the relation of* F. W. *clerk, vicar,* &c. *and* J. B. *and* J. C. *churchwardens of,* &c.

THIS defendant, ſaving and reſerving to herſelf now and at all times hereafter, all and all manner of benefit and advantage of exception to the inſufficiencies, uncertainties and other imperfections and defects of the ſaid information, for anſwer thereunto, or unto ſo much thereof as this defendant is adviſed is any ways material or neceſſary for her this defendant to make anſwer unto, ſhe this defendant anſwereth and ſaith, That ſhe believes and admits it to be true that the ſaid relator *F. W.* is vicar of the pariſh church of ——— in the county of ——— and that the ſaid relators *J. B.* and *J. C.* are churchwardens of the ſaid pariſh of ——— in the ſaid information mentioned; and this defendant believes and admits it to be true that *W. B.* late of ——— deceaſed in the ſaid information named, was in his life-time and at the time of his death poſſeſſed of a conſiderable perſonal eſtate, and being ſo poſſeſſed he did on or about the —— day of ——— which was in the year of our Lord 17 make and duly publiſh his laſt will and teſtament in writing of that date, and did therein and thereby

by (amongſt other things) give and bequeath the ſum of 500 *l.* to be raiſed by and out of his perſonal eſtate, unto *T. W.* and *J. B.* of, *&c.* two other defendants in the ſaid information named, their executors and adminiſtrators, **upon truſt** that they ſhould lay out part thereof in building a ſmall ſchool-houſe in —— with an houſe adjoining for a ſchool-maſter to live therein, and did thereby direct that the purchaſe of the ground and expence of building ſhould not exceed the ſum of 200 *l.* and the remaining 300 *l.* he the ſaid *W. B.* did thereby will and direct ſhould be laid out in the purchaſe of land or ſome real ſecurity, to be a maintenance and proviſion for the maſter of the ſaid ſchool; all which the ſaid teſtator did by his ſaid will appoint to be done by the advice and aſſent of the proprietor of *L.* and the vicar of the ſaid church of —— and the two churchwardens of the ſaid pariſh of —— for the time being, or any two of them, whereof the proprietor of *L.* aforeſaid, or the ſaid vicar for the time being, to be one; in which ſchool the ſaid teſtator did direct ſuch boys to be taught in ſuch manner, as therein and in the ſaid information particularly mentioned, and the ſaid teſtator did likewiſe by his ſaid will give ſuch directions concerning the choice and removal of the ſaid maſter of the ſaid ſchool, as therein and in the ſaid information particularly mentioned, and the ſaid *W. B.* did by his ſaid will give to the poor of the ſaid pariſh of —— to be alſo raiſed out of his perſonal eſtate the ſum of 100 *l.* to be paid by his executrix to the churchwardens of the ſaid pariſh, who (with the conſent and approbation of the vicar of the ſaid pariſh) he thereby directed ſhould place the ſame out at intereſt for ſuch purpoſes, as therein and in the ſaid information particularly mentioned, and of his ſaid will

the ſaid teſtator did appoint this defendant his widow and relict ſole executrix; and the ſaid *W. B.* did by a codicil to his ſaid will by him duly made and publiſhed, and bearing date the —— day of ——— which was in the year of our Lord 17 appoint *L. R.* of, *&c.* (another defendant in the ſaid information named) a truſtee for the purpoſes in the ſaid will mentioned, together with the other truſtees therein named; and this defendant ſaith, that the ſaid *W. B.* did depart this life on or about the time in the ſaid information for that purpoſe mentioned, without revoking or altering his ſaid laſt will and teſtament any further or otherwiſe than by the ſaid codicil as aforeſaid; and this defendant admits it to be true, that ſoon after the death of the ſaid teſtator (that is to ſay) on or about the —— day of ——— 17 this defendant did prove the ſaid will and codicil of the ſaid teſtator in the prerogative court of the Archbiſhop of *Canterbury*, being as this defendant apprehends and believes the proper eccleſiaſtical court, as by ſuch will and codicil or the probate thereof, to which when produced this defendant craves leave to refer, may more fully appear; And this defendant admits that ſhe has taken upon her the burthen of the execution of the ſaid will and codicil, and this defendant further ſaith, that ſhe admits it to be true, that the ſaid *W. B.* was in his life-time and at the time of his death poſſeſſed of, or intitled to a conſiderable perſonal eſtate fully ſufficient to pay and ſatisfy all the juſt debts and funeral expences of the ſaid teſtator, and alſo all the legacies given and bequeathed by his ſaid will; and this defendant further ſaith that ſhe admits it to be true, that ſhe did ſoon after the death of the ſaid teſtator get into her hands, cuſtody or power, ſo much of the ſaid perſonal eſtate as was fully

ſufficient to pay all the juſt debts and funeral expences of the ſaid teſtator, and alſo all the legacies given by his ſaid will; and this defendant alſo admits it to be true, that ſhe did, upon the death of her ſaid huſband, enter upon the freehold eſtate of her ſaid late huſband, called *L.* and did become, and now is, the proprietor thereof for her life, according to the ſaid teſtator's will; and this defendant admits it to be true, that all the ſaid relators have applied to her to pay the ſaid other defendants *L. R. T. W.* and *J. B.* the ſaid ſum of 500 *l.* in truſt to be applied in and to the purpoſes mentioned and declared in and by the ſaid teſtator's ſaid will in reſpect thereof, and alſo to aſſiſt them in carrying into execution the purpoſes aforeſaid, according to the directions of the ſaid will in relation to the ſaid 500 *l.* But this defendant humbly ſubmits it to the judgment of this honourable court, whether by virtue of the ſtatute, made in the 9th year of the reign of his preſent Majeſty, intitled, an Act to reſtrain the diſpoſitions of lands, whereby the ſame became unalienable, the deviſe of the ſaid 500 *l.* ſo to be laid out in ſuch purchaſe and in ſuch manner as in the ſaid will mentioned, is not void; and this defendant therefore humbly ſubmits it to the judgment of this honourable court, whether the ſaid 500 *l.* or any part thereof, ought, according to law, to be raiſed or paid or applied for ſuch purpoſes as aforeſaid, or any of them; and this defendant humbly inſiſts upon the ſaid ſtatute, and humbly hopes, that ſhe ſhall have the benefit thereof in as full and ample manner, to all intents and purpoſes, as if ſhe had pleaded the ſame to ſo much of the ſaid information, as ſeeks to have the ſaid 500 *l.* raiſed and paid as aforeſaid; and this defendant further ſaith, that ſhe denies that the ſaid relators *J. B.* and *J. C.* the preſent church-wardens of the ſaid

pariſh

pariſh of——— or either of them, have or hath ever in any manner, ſave by the ſaid information, applied to this defendant to pay to them the ſaid ſum of 100 *l.* in truſt to be by them applied in or to the charitable purpoſes mentioned or declared in or by the ſaid teſtator's ſaid will in reſpect thereof, or to any ſuch effect; nor did this defendant ever refuſe to pay the ſaid relators, or either of them, the ſaid ſum of 100 *l.* to be by them reſpectively applied in and to the ſeveral charitable purpoſes by the ſaid will declared concerning the ſame, or to any ſuch effect; but on the contrary, this defendant is and always has been ready and willing to pay the ſame to the church-wardens of the ſaid pariſh, at any time whenever they would think proper to require or receive the ſame: And this defendant has paid intereſt for the ſaid 100 *l.* at the rate of 5 *l. per cent.* by the year to the church-wardens, vicar and curate of the ſaid pariſh, or to one of them, for the time being, from the time of the death of this defendant's ſaid huſband to the———day of——— in the year of our Lord ——: And this defendant admits it to be true, that, for the reaſons herein before mentioned, ſhe does refuſe to pay, and does humbly inſiſt, that ſhe is no-wiſe liable or obliged to pay to the ſaid other defendants *L. R. T. W.* and *J. B.* or to any of them, the ſaid ſum of 500 *l.* or any part thereof, to be by them applied in or to the ſeveral purpoſes by the ſaid will declared concerning the ſame, or to aſſiſt in the carrying into execution the ſaid purpoſes or directions of the ſaid teſtator in relation thereto; and this defendant denies, that ſhe does or ever did pretend, that the ſaid *W. B.* the ſaid teſtator, did not leave aſſets ſufficient to pay and ſatisfy all his juſt debts, legacies and funeral expences, or to any ſuch effect; but on the contrary, this defendant

ſendant does admit aſſets of the ſaid teſtator's perſonal eſtate and effects, come to and now in her hands, ſufficient to anſwer and pay the ſaid legacies of 500 *l.* and 100 *l.* and the intereſt thereof reſpectively; and this defendant denies, that ſhe hath in any manner waſted or miſapplied the ſaid teſtator's perſonal eſtate and effects, or any part thereof; and this defendant ſaith, that ſhe hath not exhibited any inventory of the ſaid teſtator's perſonal eſtate into the regiſtry of the proper eccleſiaſtical court, ſhe having never been called upon or deſired ſo to do; and this defendant denies, that the ſaid charitable bequeſts are in any danger of being loſt, or the intention of the ſaid teſtator fruſtrated, ſave only, that as to the ſaid deviſe of the ſaid 500 *l.* this defendant doth humbly inſiſt, that the ſame is a bad and void deviſe at law; and that therefore the ſaid 500 *l.* or any part thereof, ought not to be raiſed, or paid or applied, according to the directions of the ſaid will; and this defendant denies all manner of unlawful combination and confederacy in the ſaid information charged; without that, that any manner or thing in the ſaid information contained, material or neceſſary for this defendant to make anſwer unto, and not herein or hereby well and ſufficiently anſwered unto, *&c.* [*in the common form.*]

A bill of interpleader.

To the Right Honourable, &c.

HUMBLY complaining, ſheweth unto your Lordſhip, your orator *J. W.* of ——— That *H. T.* late of the city of *B.* in the county of *S.* being poſſeſſed of a meſſuage or tenement with the appurtenances, ſituate and being at *S.* within the manor and pariſh of *H.* in the county

of *W.* called the *B.* Inn, and alſo of two cloſes of arable land called *W.* ſituate, lying and being within the ſaid manor and pariſh of *H.* for the remainder of one or more long term or terms of years, determinable with the lives of him the ſaid *H. T. J. T.* his ſon, and *M. M.* widow, his daughter, and the ſurvivors and ſurvivor of them, which ſaid meſſuage or tenement, lands and premiſſes, had been granted, and which he ſo held by and under two ſeveral leaſes thereof reſpectively made and executed to him by *J. W.* of —— Eſq; then Lord of the ſaid manor, at and under the yearly rents and covenants therein reſpectively contained, he the ſaid *H. T.* did ſometime in the year —— duly make and publiſh his laſt will and teſtament in writing, and thereby give and deviſe all the ſaid premiſſes to the ſaid *J. T.* his ſon, for ſo long of the ſaid terms as he ſhould live, and after his death he gave the ſame to *M.* the wife of the ſaid *J. T.* for ſo long of the ſaid terms as ſhe ſhould live, and after her death willed and deviſed, that the executors of the ſaid *J. T.* ſhould hold and enjoy the ſaid premiſſes for all the reſt, reſidue and remainder of the ſaid two terms then to come and unexpired, and of his ſaid will made the ſaid *J. T.* executor; and ſoon after the making his ſaid will, he the ſaid *H. T.* departed this life; whereupon the ſaid *J. T.* entered upon the ſaid premiſſes, and held and enjoyed the ſame under the ſaid will; and he the ſaid *J. T.* did ſoon after his ſaid father's death, prove the ſaid will in ſome proper eccleſiaſtical court, as in and by the ſaid will, or the probate thereof under the ſaid ſeal of the court, relation being thereunto had, will appear. And your orator further ſheweth unto your Lordſhip, that the ſaid *J. T.* being poſſeſſed of the ſaid premiſſes, as deviſee under the ſaid will, as aforeſaid,

ſaid, or as executor of the ſaid will, he and the ſaid *M.* his wife, did ſometime in or about the year of our Lord —— make ſome mortgage of the ſaid meſſuage or tenement called the *B.* inn to *J. K. E.* late of —— Eſq; ſince deceaſed, for ſecuring the repayment of the principal ſum of 100*l.* with intereſt for the ſame; and at or about the ſame time, or ſhortly afterwards, they the ſaid *J. T.* and *M.* his wife, did make ſome mortgage of the ſaid two cloſes called *W.* to *J. C.* of the ſaid city of *B.* barber, for ſecuring the repayment of the principal ſum of 90*l.* with intereſt for the ſame, as in and by the ſaid mortgage deeds, had your orator the ſame to produce, relation being thereunto reſpectively had, would appear. And your orator further ſheweth unto your Lordſhip, that afterwards the ſaid principal and intereſt ſecured by the ſaid mortgage to the ſaid *J. C.* not being paid according to the proviſo or condition for payment thereof in the ſaid mortgage to him made contained, and the eſtate in law of and in the ſaid two cloſes, being become abſolute at law in him the ſaid *J. C.* and there being 96*l.* 10*s.* remaining due to him for principal and intereſt on the ſaid mortgage, he the ſaid *J. C.* did, by ſome indenture by him duly executed, for the conſiderations therein mentioned, aſſign the ſaid two cloſes, and all his eſtate, right, title and intereſt therein to *R. K.* of *B.* in the ſaid county of *W.* yeoman, ſubject to redemption on payment of the principal ſum of 96*l.* 10*s.* with intereſt for the ſame, by the ſaid *J. T.* at the time and in the manner in the ſaid deed of aſſignment mentioned, as in and by the ſaid deed of aſſignment, had your orator the ſame to produce, relation being thereunto had, would more fully appear. And the ſaid *J. T.* at or about the ſame time delivered him the ſaid *R. K.* the poſſeſſion of the

ſaid two cloſes, and he hath ever ſince been in the receipt of the rents thereof; and your orator further ſheweth unto your Lordſhip, that the ſaid *J. K. E.* ſome time ſince departed this life, having in his life-time duly made and publiſhed his laſt will and teſtament in writing, and thereof nominated and appointed *C. E.* ſpinſter, his only child, executrix, who hath ſince his death duly proved his ſaid will in ſome proper eccleſiaſtical court, as in and by the probate thereof under the ſeal of the ſaid court, relation being thereunto had, will appear; and your orator ſheweth unto your Lordſhip, that the eſtate in law of the ſaid *C. E.* of and in the ſaid meſſuage or tenement called the *B.* inn being abſolute in her as executrix as aforeſaid, and there being a large ſum of money due upon the ſaid mortgage thereof for principal and intereſt, ſhe the ſaid *C. E.* did, by ſome indenture or deed of aſſignment, for the conſiderations therein mentioned, ſometime in or about the month of *October* laſt, aſſign the ſaid meſſuage or tenement with the appurtenances, and all her eſtate, right, title or intereſt therein to the ſaid *R. K.* as in and by the ſaid laſt mentioned deed or indenture of aſſignment, had your orator the ſame to produce, relation being thereunto had, would appear. And your orator further ſheweth unto your Lordſhip, that the ſaid *R. K.* being poſſeſſed of and intitled to the ſaid two cloſes of land, by virtue of and under the ſaid aſſignment thereof, did ſometime in or about the month of *September* laſt demiſe the ſame to your orator by parol or word of mouth only, for the term of three years from *Michaelmas* now laſt paſt, at the yearly rent of —— payable —— which is the full yearly value thereof; and the ſaid *C. E.* ſhortly before ſhe aſſigned the ſaid meſſuage or tenement to the ſaid *R. K.* as aforeſaid, had in like manner demiſed the ſame to your orator

orator by parol or word of mouth only for three years from *Michaelmas* now laſt paſt, at the yearly rent of —— payable —— which is the full value thereof. And your orator ſheweth unto your Lordſhip, that the ſaid *J. T.* having got into the poſſeſſion of all the premiſſes, the ſaid *R. K.* hath cauſed an action of treſpaſs and ejectment to be brought in his Majeſty's court of King's Bench for recovery of the poſſeſſion thereof, and hath cauſed a declaration in ejectment to be delivered to and ſerved upon your orator, but at the ſame time told your orator, that he would not diſturb your orator in his poſſeſſion as tenant thereof as aforeſaid, and that he only intended to recover the ſame againſt the ſaid *J. T.* and your orator having given notice of and delivered over the ſaid declaration to the ſaid *J. T.* he alledged to your orator, that he had paid off and ſatisfied the ſaid *R. K.* all monies due on the ſaid two mortgages, and told your orator he need not give himſelf any trouble about it, declaring that he the ſaid *J. T.* would defend the ſaid ſuit, and the poſſeſſion of the ſaid premiſſes. And your orator ſheweth unto your Lordſhip, that —— being a year's rent, became due from your orator for the ſaid premiſſes; and they the ſaid *R. K.* and *J. T.* have both of them demanded the ſame of and from your orator, and do each of them inſiſt to be paid the ſame; and your orator ſheweth unto your Lordſhip, that your orator confiding in ſuch the declarations of them the ſaid *R. K.* and *J. T.* with reſpect to the ſaid ejectment, did not make any defence thereto, but by colluſion between them the ſaid *R. K.* and *J. T.* the ſaid *J. T.* having cauſed himſelf or your orator to be made tenant in the room of the caſual ejector, the ſaid cauſe was by the ſaid *R. K.* carried down in order to be tried at the laſt aſſizes held in and for *S.* in the ſaid county of *W.* and

the jury being ſworn, and the ſaid *J. T.* or any on his or your orator's behalf, not appearing to confeſs leaſe, entry and ouſter, the plaintiff in the ſaid ejectment was nonſuited, and the *Poſtea* being returned, judgment hath been thereupon given againſt the caſual ejector, and the ſaid *R. K.* threatens that he will cauſe a writ of poſſeſſion to be ſued out upon the ſaid judgment, and will turn your orator out of poſſeſſion of the ſaid premiſſes, and will cauſe an action to be brought againſt your orator for the meſne profits thereof; and they both threaten to diſtrain your orator's goods for the ſaid rent, and otherwiſe to proceed againſt your orator at law for the ſame, ſo that your orator is not able to determine or judge to which of them the ſaid rent of right belongs, or is payable, nor to which of them ſecurely and with ſafety to pay the ſame; and they both declare and threaten they will turn your orator out of poſſeſſion of the ſaid premiſſes, and not ſuffer your orator to hold or enjoy the ſame. All which actings and doings of the ſaid *R. K.* and *J. T.* (who combine and confederate together, and with divers other perſons at preſent unknown to your orator, whoſe names, when diſcovered, your orator prays may be inſerted herein, and they made parties, with apt words to charge them how to injure and oppreſs your orator in and touching the premiſſes) are contrary to equity and good conſcience, and tend to your orator's manifeſt wrong and oppreſſion. **In tender conſideration whereof,** and foraſmuch as your orator is remedileſs in the premiſſes by the rules of common law, and can only be relieved in a court of equity before your Lordſhip, where matters of this nature are properly cognizable, and where your orator may compel the ſaid claimants to interplead and ſettle and adjuſt their rights and demands between themſelves, ſo that your orator

orator may be enabled to pay the ſaid rent with ſafety; and for that your orator's witneſſes, who could prove the truth of the ſeveral matters aforeſaid, are dead, or gone into parts beyond the ſeas remote, and to your orator unknown; **To the end therefore,** that the ſaid *R. K.* and *J. T.* and the reſt of the confederates (when diſcovered,) may upon their reſpective corporal oaths full, true and perfect anſwer make (according to the beſt of their knowledge, remembrance, information and belief,) to all and ſingular the matters aforeſaid, as fully and effectually to all intents and purpoſes, as if the ſame were here repeated, and they particularly and diſtinctly interrogated; and more eſpecially that they may ſet forth and diſcover, whether the ſaid *H. T.* was not in his life-time poſſeſſed of the ſaid meſſuage or tenement, and two cloſes of land, for ſome and what term or terms of years determinable in manner as aforeſaid, or how otherwiſe; and whether he did not in his life-time duly make and publiſh his laſt will and teſtament in writing, and thereby give and deviſe the premiſſes, or any, and what part thereof, to ſuch perſons and in ſuch manner as aforeſaid, or how otherwiſe; and whether the ſaid *J. T.* and *M.* his wife, or either and which of them, did not become poſſeſſed of or intitled under the ſaid will, or how otherwiſe, to the ſaid premiſſes, or any and what part thereof; and whether the ſaid *J. T.* and *M.* his wife, or the ſaid *J. T.* alone, did not make ſome, and what mortgage of the ſaid meſſuage or tenement called the *B.* inn, to the ſaid *J. K. E.* and whether the eſtate at law of the ſaid *J. K. E.* or of the ſaid *C. E.* therein did not become abſolute; and whether he the ſaid *J. K. E.* is not dead, and where he died; and whether he did not in his life-time make the ſaid *C. E.* his only child executrix thereof; and whether ſhe as

executrix as aforeſaid, did not become poſſeſſed of or intitled to the ſame; and whether ſhe did not make ſuch aſſignment thereof as aforeſaid, or any other, and what aſſignment, and when, to the ſaid *R. K.* or how otherwiſe he the ſaid *R. K.* became poſſeſſed of or intitled to the ſame; and whether as they know, have heard or do believe, the ſaid *C. E.* before the making the ſaid aſſignment, did not demiſe the ſaid meſſuage or tenement to your orator by parol or word of mouth, or how otherwiſe for ſuch term of three years from *Michaelmas* laſt, or for what other term, at ſuch yearly rent as aforeſaid, payable as aforeſaid, or what other rent and how payable; and whether they the ſaid *J. T.* and *M.* his wife, or the ſaid *J. T.* alone, did not make ſome, and what mortgage of the ſaid two cloſes to the ſaid *J. C.* and whether the eſtate of the ſaid *J. C.* therein did not become abſolute at law; and whether the ſaid *J. C.* did not afterwards, and when, make ſome and what aſſignment thereof to the ſaid *R. K.* and whether he the ſaid *R. K.* did not, and when, demiſe the ſaid two cloſes to your orator by parol or by word of mouth, or how otherwiſe, for ſuch term of three years from *Michaelmas* laſt, or for what other term, at ſuch yearly rent as aforeſaid, payable as aforeſaid, or what other rent, and how payable; and whether the ſaid *R. K.* hath not cauſed a declaration of ejectment to be delivered, and when, to your orator; and whether he did not make and give your orator ſuch aſſurance concerning the ſame as aforeſaid, or what elſe he ſaid, intimated or ſignified to your orator concerning the ſame; and whether he the ſaid *J. T.* did not cauſe himſelf to be made defendant in the ſaid action in the room of the caſual ejector, and whether he did not undertake or promiſe to defend the ſame, and whether he any ways, and how,

did

did defend the ſame; and whether the plaintiff in the ſaid ejectment was not nonſuited at the ſaid laſt S. aſſizes on account of the ſaid *J. T.*'s not appearing to confeſs leaſe, entry and ouſter, and how otherwiſe; and whether thereupon judgment hath not been had, or is not intended to be had againſt the caſual ejector; and whether he the ſaid *R. K.* hath not threatned or declared, that he would cauſe a writ of poſſeſſion to be ſued out upon the ſaid judgment, or doth not intend ſo to do; and whether they the ſaid *R. K.* and *J. T.* have not threatned to turn your orator out of the poſſeſſion of the ſaid premiſſes, or any and what part thereof; and whether there is not now due for rent of the ſaid premiſſes the ſum of —— or any other, and what ſum; and whether they do not both demand the ſaid rent, or threaten to diſtrain or ſue your orator for the ſame, or which of them ſo doth, and that they may ſet forth to which of them the ſaid rent doth of right belong, or is payable, and may interplead and ſettle and adjuſt their ſaid demands between themſelves; your orator being willing to pay the ſaid rent to either of them, to whom the ſame ſhall appear of right to belong, being indemnified; and that your orator may be at liberty to bring the ſame into this honourable court, which your orator doth hereby offer to do for the benefit of ſuch of the ſaid two parties who ſhall appear to be intitled thereto; and that they the ſaid *R. K.* and *J. T.* and each of them, may be reſtrained by the injunction of this honourable court from proceeding at law againſt your orator for the ſaid rent, and alſo from proceeding in the ſaid ejectment, or any other ejectment for recovery of the ſaid premiſſes or any part thereof, during the remainder of the ſaid three years, for which the ſaid premiſſes were ſeverally demiſed to your orator as aforeſaid; and

that

that your orator may be quieted in the poſſeſſion of all and ſingular the ſaid premiſſes during ſuch the remainder of the ſaid term of three years; and that your orator may have and receive ſuch further and other relief in and touching all and ſingular the matters and things aforeſaid, as to your Lordſhip ſhall ſeem meet and agreeable to equity and good conſcience; May it pleaſe your Lordſhip, *&c.*

Note; To this bill an affidavit muſt be annexed, that the plaintiff doth not in any reſpect collude with either of the defendants touching all or any of the matters in queſtion in the cauſe, nor is any ways indemnified by either of the defendants; nor doth exhibit his bill at the requeſt or with the knowledge of either of them, but merely of his own free will, and to avoid being doubly vexed touching the matters contained in his bill.

A ſpecial concluſion to a bill exhibited againſt the Attorney General and others.

——MAY *it pleaſe your Lordſhip* to grant unto your orator his Majeſty's moſt gracious writ and writs of *ſubpœna* to be directed to the ſaid *A. B. C. D.* and *E. F.* thereby commanding them and every of them, at a certain day and under a certain pain therein to be limited, perſonally to be and appear before your Lordſhip in this honourable court, then and there full and perfect anſwer to make to all and ſingular the premiſſes; and that the Attorney General, being attended with a copy of this bill, may appear, and put in his anſwer thereto; and that all the ſaid defendants may farther ſtand to and abide ſuch order, direction and decree in the ſaid premiſſes,

as

as to your Lordſhip ſhall ſeem meet. And your orator ſhall ever pray, *&c.*

An anſwer to a bill of foreclosure.

The anſwer of, &c.

THE defendant ſaving, *&c.* anſwereth and ſaith, that he admits, that he being ſeiſed of, and intereſted in, or otherwiſe intitled to, the fee-ſimple and inheritance of and in the ſeveral meſſuages and lands in the complainant's bill mentioned, and having occaſion for the ſum of —— this defendant in the year —— applied to the complainant to lend him the ſame; and for ſecuring the repayment of the ſaid ſum of —— and intereſt, this defendant propoſed to convey and aſſure the ſaid ſeveral meſſuages and lands to the complainant, and accordingly this defendant admits, that by ſuch indenture of mortgage, as by the complainant's bill is mentioned to bear date the —— day of —— and made between this defendant by the name of —— of —— in the county of —— of the one part, and the complainant, by the name of —— of —— *&c.* of the other part, this defendant in conſideration of the ſum of —— paid by the ſaid complainant to this defendant, did grant, bargain, ſell, alien, releaſe and confirm unto the ſaid complainant and his heirs the ſaid ſeveral meſſuages, lands, tenements and premiſſes in the ſaid complainant's bill for that purpoſe more particularly mentioned and ſet forth, and the reverſion and reverſions, remainder and remainders, rents, iſſues and profits thereof, and all his eſtate therein, together with all deeds, evidences and writings touching or concerning the premiſſes, to hold unto the ſaid complainant, his heirs and aſſigns

for

for ever; and this defendant does admit, that in ſuch indenture of mortgage there is a proviſo to the effect in the complainant's bill mentioned; and likewiſe that there is ſuch a *memorandum* or indorſement on the back of the ſaid indenture of mortgage, to the effect in the complainant's bill alſo mentioned; and likewiſe, that for the further and better ſecuring the payment of the ſaid ſum of —— with intereſt to the complainant, this defendant did enter into ſuch obligation to the complainant, as in the complainant's bill in that behalf is mentioned, and with ſuch condition as in the complainant's bill is ſet forth; but for greater certainty as to the ſaid indenture of mortgage, indorſement and bond, this defendant refers himſelf to the ſame reſpectively, when they ſhall be ſeverally produced. And this defendant does admit, that the ſaid ſum of ——or any part thereof, or any intereſt for the ſame, was not paid to the complainant, purſuant to the proviſo in the ſaid indenture of mortgage contained, and that thereby the complainant's eſtate and intereſt in the mortgaged premiſſes may become abſolute in law; and this defendant does admit, that the complainant either by himſelf, or others on his behalf, may have applied to him for the payment of the intereſt of the ſaid —— and on the defendant's not paying of the ſame, that this defendant ſhould pay the whole principal and intereſt, but does not remember or believe that the complainant, or any perſon on his behalf, ever applied to him to releaſe his equity of redemption in the ſaid mortgaged premiſſes, which ſaid premiſſes this defendant ſaith that he had power to aſſign to the complainant, as is herein before mentioned, and not aſſigned over to any other perſon or perſons, or incumbered or charged in any other manner than as is herein before mentioned: And this defendant does admit,

that

that he has not paid to the complainant any intereſt for the ſaid —— or any part of the ſaid principal ſum of —— but this defendant ſaith, that on the —— day of —— now laſt paſt, there was no more due to the complainant from this defendant, for the intereſt of the ſaid —— than the ſum of —— which ſaid premiſſes, notwithſtanding ſuch arrears of intereſt, this defendant humbly apprehends to be an ample ſecurity for the ſaid principal ſum of —— and intereſt, the ſaid premiſſes being of a conſiderable value, and at the improved rent of ——— and upwards, and therefore humbly hopes that this court will allow him a reaſonable time to redeem and pay off the ſaid mortgage, as he is willing and deſirous ſo to do; and this defendant denies all and all manner of unlawful combination and confederacy in the complainant's bill charged againſt him; without that, that there is any other matter or thing in the complainant's ſaid bill of complaint contained, material or effectual for this defendant to make anſwer unto, and not herein and hereby ſufficiently anſwered unto, confeſſed or avoided, traverſed or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honourable court ſhall award, and humbly prays to be hence diſmiſſed with his reaſonable coſts and charges in this behalf wrongfully ſuſtained.

An

An anſwer of infants by their guardian.

Sworn the—day of— 1744. by the ſaid *D. B.* as guardian of the ſaid defendants the infants, purſuant to an order bearing date the— day of—1744. before me——

The joint and ſeveral anſwer of A. B. *and* C. D. *infants, under the age of* 21 *years, by* D. B. *their mother and guardian, two of the defendants, to the bill of complaint of* E. F. *widow, compldinant.*

THE ſaid defendants, ſaving to themſelves, and each of them, all and all manner of advantage of exception to the many untruths, errors, uncertainties, and other imperfections in the ſaid bill of complaint contained, for anſwer thereunto, or to ſo much thereof as theſe defendants are adviſed is material for them, or either of them, to make anſwer to, they anſwering by their ſaid guardian, ſeverally ſay, That they are ſtrangers to all and ſingular the matters and things in the ſaid bill of complaint contained, otherwiſe than that theſe defendants have heard, that *G. B.* their grandfather, in the bill named, was ſeiſed of or intitled to ſeveral lands and tenements, and alſo poſſeſſed of a conſiderable perſonal eſtate; and alſo have heard that theſe defendants father *H. B.* in the bill mentioned died inteſtate; and alſo that their ſaid grandfather and father made ſome proviſion for theſe defendants by bond, ſettlement, or otherwiſe: And theſe defendants being infants of tender years ſubmit themſelves to the judgment of this honourable court, and humbly hope that what right or title they, or either of them, have to the real or perſonal eſtates of their grandfather, or father, ſhall be protected and ſaved to them reſpectively: Without that, that, *&c.*

An anſwer and diſclaimer.

The ſeveral anſwer *and* diſclaimer *of* A. B. *one of the defendants to the bill of complaint of —— complainants.*

THIS *defendant*, ſaving and reſerving to himſelf, now and at all times hereafter, all manner of advantage and benefit of exception, that may be had and taken to the many untruths, incertainties, inſufficiencies and imperfections, in the ſaid complainants ſaid bill of complaint contain'd, for a full and perfect anſwer thereunto, or to ſuch part thereof as it materially concerns this defendant to make anſwer unto, he anſwereth and ſaith, That he believes that *C. D.* did die ſeiſed of ſuch eſtates in —— and —— as in the ſaid complainants ſaid bill are mentioned; and this defendant does believe that the ſaid *C. D.* did make ſuch laſt will and teſtament in writing, and did thereby create ſuch truſts out of the ſaid —— eſtates, and appointed this defendant truſtee thereof, in ſuch manner and to ſuch purport and effect, as in the ſaid complainants ſaid bill for that purpoſe ſet forth; and this defendant does believe that the ſaid teſtator made *E. F.* Gent. executor of his ſaid will; and this defendant does believe that the ſaid *C. D.* ſoon after making his ſaid will departed this life, that is to ſay, on or about the —— day of ——— in the year —— without revoking or altering his ſaid will, ſeiſed of ſuch eſtates in —— and —— as in the ſaid complainants ſaid bill are ſet forth: And this defendant further ſaith, that he was adviſed that the ſaid truſt would be attended with ſome difficulty, beſides expence and loſs of time to this defendant;

dant; therefore this defendant abſolutely refuſed to intermeddle therewith, or any way concern himſelf therein: And this defendant denies, that he or any for him ever entered on the ſaid truſt-eſtate, or ever received any of the rents and profits thereof; but this defendant hath been informed and believes the ſame were received by *G. H.* of the city of ——— in the ſaid county of ——— Gent. who was imployed by the ſaid teſtator *C. D.* in his life-time to receive the rents and profits of the ſaid —— eſtate for the ſaid *C. D.* and this defendant doth believe, that the ſaid *G. H.* hath received the ſaid rents and profits of the ſaid truſt-eſtate ever ſince the death of the ſaid teſtator *C. D.* and ſtill doth continue to receive the ſame: And this defendant poſitively denies that the ſaid *G. H.* had any power, authority or direction from this defendant to receive all or any part of the rents and profits of the ſaid truſt-eſtate, or that he ever accounted with this defendant for the ſame: And this defendant is very deſirous and ready to be diſcharged from his ſaid truſt, and to do any act for that purpoſe as this honourable court ſhall direct, this defendant being indemnified in ſo doing, and having his coſts. And this defendant farther ſaith, that as to ſo much of the ſaid bill as ſeeks a diſcovery of this defendant's title to the lands in —— this defendant ſaith, that he doth not know that he this defendant to his knowledge or belief ever had, nor did he claim or pretend to have, nor doth he now claim or pretend to have, any right, title or intereſt of, in or to the ſaid eſtate in ——— in the ſaid complainants bill ſet forth, or any part thereof; And this defendant doth diſclaim all right, title and intereſt to the eſtate in ——— in the complainants ſaid bill mentioned, and every part thereof. And this defendant doth deny all manner

manner of unlawful combination and confederacy unjuſtly charged againſt him in and by the ſaid complainants ſaid bill of complaint; without that, that any other matter or thing in the ſaid complainants ſaid bill of complaint contained, material or neceſſary for this defendant to make anſwer unto, and not herein or hereby well and ſufficiently anſwered unto, confeſſed or avoided, traverſed or denied, is true: All which matters and things this defendant is ready to aver, maintain and prove, as this honourable court ſhall award, and humbly prays to be hence diſmiſſed with his reaſonable coſts and charges in this behalf moſt wrongfully ſuſtained.

CHAP. IX.

Pleas, anſwers and demurrers.

Plea of a former ſuit depending for the ſame matter.

Filed the—day of—1744.

The plea of C. D. *Gent. one of the defendants, to the bill of complaint of* A. B. *Eſq; complainant.*

THE ſaid defendant by proteſtation, not confeſſing or acknowledging all or any of the matters and things in the complainant's ſaid bill of complaint contained to be true, in ſuch manner and form as the ſame are therein declared and ſet forth, for plea thereunto ſaith,

Note; This plea is *without* oath.

ſaith, that heretofore, and before the ſaid complainant exhibited his bill in this honourable court, to wit, on the —— day of ——— which was in the year of our Lord —— the ſaid now complainant, together with —— and ——— in the ſaid bill named, did exhibit their bill of complaint into this honourable court againſt this defendant, and alſo againſt —— for the ſame matters, and to the ſame effect, and for the like relief and purpoſe as againſt this defendant, as the now complainant doth by his preſent bill ſet forth; to which ſaid firſt bill this defendant did put in his anſwer, and the then complainant thereunto replied, and the ſaid former bill is ſtill depending in this honourable court, and the ſaid cauſe is yet undetermined; and therefore this defendant doth plead the ſaid former bill, anſwer and proceedings in bar to the ſaid now complainant's ſaid preſent bill; and humbly prays the judgment of this court, whether he ſhall be compelled to make any farther or other anſwer thereunto; and prays to be hence diſmiſſed with his coſts and charges in this behalf ſuſtained.

A plea of the ſtat. of limitations in bar of an account.

Sworn the — day of — 1744. before

The plea of C. D. *Gent. defendant, to the bill of complaint of* A. B. *Gent. complainant.*

THIS defendant by proteſtation, not confeſſing or acknowledging all or any of the matters and things in the complainant's ſaid bill of complaint contained to be true, in ſuch manner and form as the ſame are therein and thereby charged

charged and alledged, for plea unto the ſaid bill ſaith, *That* if the complainant, either in his own right, or as executor of —— in the bill named, ever had any cauſe of ſuit againſt him this defendant, for or concerning any the matters, tranſactions or dealings in the ſaid bill of complaint mentioned (which this defendant doth in no ſort admit) the ſame did accrue or ariſe above ſix years before filing the ſaid bill, and above ſix years before ſerving this defendant with any proceſs to appear to and anſwer the ſame: And this defendant farther for plea ſaith, and doth aver, that he did not at any time within ſix years before filing the complainant's ſaid bill of complaint, nor within ſix years before this defendant was ſerved with proceſs to appear and anſwer thereto, ever promiſe or agee to come to any account for, or to pay or any ways ſatisfy the ſaid complainant any money, for or concerning any the matters, tranſactions or dealings in the complainant's ſaid bill of complaint charged or alledged; and therefore this defendant doth plead the act of parliament or ſtatute of limitations, made in the 21ſt year of King *James* the firſt, and prays the benefit of the ſaid act of parliament for limitation of actions: All which matters this defendant doth aver and plead in bar of the complainant's ſaid bill, and of the complainant's pretended demands, for which he ſeeks to be relieved by his ſaid bill; And this defendant prays to be hence diſmiſſed with his reaſonable coſts in this behalf wrongfully ſuſtained.

A plea in bar of a verbal agreement, where a bill is brought to carry it into execution, and to reduce it into writing.

Sworn the — day of — 1744. before

The plea of C. D. *one of the defendants to part, and his* anſwer *to the reſidue of the bill of complaint of* A. B. *and others, complainants.*

THE end of the plaintiff's bill is to compel this defendant to perform an agreement thereby ſuggeſted to have been made by this defendant with the complainant, for the granting or executing to the complainant a leaſe in writing of the ſeveral lands and tenements in the bill mentioned, for the term of ten years, from the feaſt of St. *Michael* the archangel, which was in the year of our Lord God —— purſuant to ſuch precedent agreement; this defendant by proteſtation, not confeſſing or acknowledging all or any the matters or things in the ſaid bill contained to be true, in ſuch ſort, manner and form, as the ſame are therein and thereby charged, alledged or ſet forth, as to ſo much of the ſaid bill as ſeeks to compel this defendant, or any perſon or perſons claiming under him, to execute a leaſe in writing of the ſeveral lands and tenements in the bill mentioned, or of any of them, or of any part thereof, purſuant to the pretended agreement in the bill mentioned, and as to any the relief thereby prayed touching ſuch leaſe and agreement, this defendant doth plead in bar; and for plea ſaith, that by an act of parliament made in the 29th year of the reign of his late Majeſty

Majeſty King *Charles* the Second, intitled, *An act for prevention of frauds and perjuries*, it is amongſt other things enacted, That from and after the 24th day of *June* 1677, no action ſhall be brought whereby to charge any perſon upon any contract of lands, tenements or hereditaments, or any intereſt in or concerning them, unleſs the agreement upon which ſuch action ſhall be brought, or ſome memorandum or note thereof, ſhall be in writing, and ſigned by the party to be charged therewith, or ſome other perſon thereunto by him lawfully authoriſed, as by the ſaid act may appear: And this defendant avers, that neither he this defendant, nor any perſon by him lawfully authoriſed, did ever make or ſign any contract or agreement in writing for making or executing any leaſe to the complainant of the ſame premiſſes, or any of them, or of any part or parcel thereof, or to any ſuch effect, as by the ſaid bill is ſuggeſted, or any memorandum or note in writing of any agreement whatſoever, for or concerning the demiſing or leaſing, or making or executing any leaſe of the ſaid premiſſes, or any of them, or any part or parcel thereof to the complainant; and therefore this defendant doth plead the ſaid act of parliament, and matters aforeſaid, in bar to ſo much and ſuch part of the ſaid bill as ſeeks to compel this defendant, or any perſon or perſons claiming under him, to execute a leaſe to the complainant of the ſeveral lands and tenements in the bill mentioned, or of any of them, or of any part or parcel thereof, purſuant to the ſaid pretended agreement, and as to any the relief thereby prayed touching ſuch leaſe and agreement, and humbly prays the judgment of this honourable court, whether he ſhall be compelled to make any farther or other anſwer to ſo much and ſuch part of the ſaid bill as is herein

and hereby pleaded unto as aforeſaid: *And* this defendant not waiving his ſaid plea, but wholly relying and inſiſting thereon, for anſwer to the reſidue of the complainant's bill not herein before pleaded unto, or to ſo much thereof as he this defendant is adviſed is material or neceſſary for him to make anſwer unto, he anſwereth and ſaith, *&c.* [*Here recite ſuch anſwer as counſel ſhall adviſe the defendant to make to the reſidue of the complainant's ſaid bill, and conclude thus*] *Without that*, that any other matter or thing in the complainant's ſaid bill of complaint contained, material or effectual for this defendant to make anſwer unto, and not herein before pleaded and anſwer'd unto, confeſſed or avoided, traverſed or denied, is true: All which matters and things this defendant is ready to aver, juſtify, maintain and prove, as this honourable court ſhall award and direct; and humbly prays to be hence diſmiſſed, with his reaſonable coſts and charges in this behalf ſuſtained.

A plea of the ſtatute of 29 Car. 2. *in bar to a pretended agreement, and alſo a miſnomer.*

Sworn, *&c.*

The ſeveral plea and anſwer of C. D. *one of the defendants to the bill of complaint of* A. B. *complainant.*

THE ſaid defendant by proteſtation, not confeſſing or acknowledging all or any of the matters or things in and by the ſaid bill of complaint ſet forth and alledged to be true, for plea thereunto ſaith, that he is adviſed that the complainant, by his bill of complaint, ſeeks to have

have a diſcovery of a ſuppoſed undertaking and promiſe, ſuggeſted to be made by this defendant ſometime in or about the month of —— which was in the year of our Lord —— wherein this defendant is ſuppoſed to undertake and promiſe the complainant to ſatisfy and pay him for whatever goods and wares the complainant ſhould from thenceforth ſell to —— another defendant in the ſaid bill named; and that under ſuch pretended agreement the complainant hath ſold and delivered unto the ſaid —— the ſeveral parcels of goods mentioned in a ſchedule annexed to the ſaid bill, amounting to the ſum of —— as to ſo much and ſuch part of the ſaid bill which ſeeks a diſcovery from this defendant relating to ſuch pretended undertaking or promiſe, or any relief thereupon, this defendant pleadeth, that by a ſtatute or act of parliament made in the 29th year of the reign of King *Charles* the Second, intitled, *An act for prevention of frauds and perjuries*, it is amongſt other things enacted, That from and after the 24th day of *June* which was in the year of our Lord 1677, no contract for ſale of any goods, wares and merchandizes for the price of 18 *l.* ſterling, or upwards, ſhall be allowed to be good, except the buyer ſhall accept part of the goods ſo ſold, and actually receive the ſame, or give ſomething in earneſt to bind the bargain, or in part of payment; or that ſome note or memorandum in writing of the ſaid bargain be made and ſigned by the parties to be charged by ſuch contract, or their agents thereunto lawfully authoriſed; which ſtatute, and particularly the ſaid clauſe therein and herein before mentioned, this defendant doth plead in bar to the complainant's demands, the complainant not ſuggeſting in and by his ſaid bill of complaint, that this defendant did accept any part of the goods ſuggeſted in and

by the ſaid bill of complaint to be ſold, or actually received the ſame, or gave any thing in earneſt to bind the bargain, or in part of payment; nor that any note or memorandum in writing of ſuch pretended bargain was made and ſigned by this defendant, or by any agent lawfully authoriſed by this defendant, otherwiſe than as it is pretended and ſuggeſted in and by the ſaid bill of complaint, that this defendant did at the time of ſuch pretended undertaking and promiſe, write down his this defendant's name on a piece of paper, and deliver the ſame to the complainant: And this defendant for farther plea ſaith, that the complainant in and by his ſaid bill of complaint doth call this defendant by the name of ——— whereas this defendant doth aver, that his name is ——— and that he this defendant was always known by the name of ——— and that this defendant always ſigned his name —— to the beſt of this defendant's knowledge, remembrance and belief; therefore this defendant doth likewiſe plead the ſaid miſnomer in bar of any farther diſcovery and relief prayed by the ſaid bill, and humbly claims the benefit thereof. And for anſwer to the reſidue of the ſaid bill of complaint, or to ſo much and ſuch part thereof as this defendant is adviſed materially concerns him to make anſwer unto, this defendant anſwereth and ſaith, *That* he believes it may be true that the ſaid ——— was by trade a ——— and that the complainant might have dealings with him the ſaid ——— in the way of his trade, and that the ſaid ——— might be a priſoner for debt in the King's Bench priſon about the time for that purpoſe ſet forth in the bill; and this defendant farther anſwering ſaith, that he doth not remember that about the time in the bill ſet forth, or at any other time, this defendant did write down his

name on a piece of paper, and deliver the ſame to the complainant; and this defendant is the rather induced to believe that he did not ſo write down his name on a piece of paper, and deliver the ſame to the complainant, becauſe the complainant throughout the ſaid bill of complaint hath called this defendant by the name of ——— whereas this defendant never wrote any other name for himſelf than ——— to the beſt of this defendant's knowledge, remembrance and belief; and therefore if this defendant had wrote his name on a piece of paper, and delivered the ſame to the complainant, this defendant verily believes that the name pretended to be wrote on ſuch piece of paper would have been——and not—— however, if the complainant has any ſuch piece of paper, this defendant leaves the complainant to make ſuch uſe thereof as he ſhall be adviſed: For all which cauſes this defendant doth humbly demand the judgment of this honourable court, whether he ſhall be compelled to make any farther anſwer unto the complainant's ſaid bill of complaint than as aforeſaid. And this defendant doth deny all unlawful combination and confederacy; without that, that any other matter or thing in the complainant's ſaid bill of complaint contained, material or effectual for this defendant to make anſwer unto, and not herein before pleaded and anſwered unto, confeſſed or avoided, traverſed or denied, is true: All which matters and things this defendant is ready to aver, juſtify, maintain and prove, as this honourable court ſhall order and direct. And this defendant humbly prays to be hence diſmiſſed with his reaſonable coſts and charges in this behalf moſt wrongfully ſuſtained.

Sworn, *&c.*

A plea of the ſtatute of limitations in bar of an account.

THIS defendant by proteſtation, not confeſſing or acknowledging all or any the matters and things in the complainant's ſaid bill of complaint contained to be true, in ſuch manner and form as the ſame are therein alledged and ſet forth, as to ſo much of the ſaid bill as ſeeks an account and diſcovery of the eſtate or effects of *A. B.* Gent. deceaſed, this defendant's teſtator, or that ſeeks ſatisfaction for or on account of any money received by the ſaid *A. B.* on account of —— in the bill named, or for or on account of the complainant; or that ſeeks a diſcovery how many hogſheads of tobacco or rice, or any other commodities pretended to be conſigned to the ſaid *A. B.* or that ſeeks a ſatisfaction for the ſame, or that ſeeks a diſcovery or ſatisfaction for any of the monies, goods or effects of the ſaid —— come to the hands of this defendant ſince the deceaſe of the ſaid *A. B.* this defendant pleads thereto, and for plea ſaith, that —— in the bill named, under whom the complainant pretends to claim, departed this life in or about the year —— and that *A. B.* Gent. this defendant's teſtator, departed this life in or about the month of —— and that the monies and effects pretended to be received by the ſaid *A. B.* or by this defendant, and the goods and commodities pretended to be conſigned, if any ſums of money, goods or effects were received by the ſaid *A. B.* or by this defendant (which this defendant doth not in any ſort admit) that all and every ſuch ſums of money, goods and effects, were received by the ſaid *B.* or by this defendant

defendant above ſix years before this defendant was ſerved with any proceſs of this court to anſwer the ſaid bill, or any proceſs was ſued out againſt this defendant to call this defendant to an account for the ſame; and that if the complainant had any cauſe of action or ſuit againſt this defendant, or againſt the ſaid *A. B.* for or concerning any of the ſaid matters, (which this defendant doth not admit) that ſuch cauſe of action or ſuit did accrue or ariſe above ſix years before filing of the ſaid bill, or ſerving this defendant with proceſs to appear to and anſwer the ſaid bill: Nor did this defendant or his ſaid teſtator, at any time within ſix years before exhibiting the ſaid bill or ſuing out proceſs againſt this defendant, promiſe or agree to come to any account, or to make ſatisfaction, or to pay any ſum or ſums of money for or by reaſon of any of the ſaid matters; and therefore this defendant doth plead the act of parliament made in the twenty-firſt year of the reign of King *James* the firſt, for the limitation of actions, and avoiding of ſuits at law; and prays the benefit of the ſaid act, and pleads the ſame in bar of ſo much of the complainant's ſaid demands in his ſaid bill ſet forth and mentioned; and prays the judgment of this honourable court thereon. And this defendant not waving his ſaid plea, but wholly relying and inſiſting thereon, for anſwer to the reſidue of the complainant's ſaid bill, or to ſo much thereof as he this defendant is adviſed is material or neceſſary for him to make anſwer unto, he this defendant anſwereth and ſaith, *&c.*

A plea of outlawry.

Sworn, *&c.*

The plea of A. B. *defendant, to the bill of complaint of* C. D. *complainant.*

THE ſaid defendant by proteſtation, not confeſſing or acknowledging all or any of the matters or things in the complainant's ſaid bill of complaint contained to be true, in ſuch manner and form as the ſame are therein and thereby ſet forth, alledged and declared, for plea thereunto ſaith, That the ſaid complainant now is and ſtandeth a perſon outlawed, and is thereby diſabled by the laws of this realm to ſue or commence any action or actions, ſuit or ſuits in this honourable court, or in any other court, until the ſaid outlawry be reverſed by due courſe of law; for this defendant ſaith, that on *Monday* next before the feaſt of the purification of the bleſſed *Virgin Mary* in the tenth year of the reign of our late Sovereign Lord King —— the ſaid complainant by the name of *C. D.* was outlawed in an action of treſpaſs at the ſuit of —— as by the ſaid outlawry *ſub pede ſigilli* hereunto annexed may appear; which ſaid outlawry doth yet ſtand and remain in full force and unreverſed: And this defendant doth aver that the ſaid *C. D.* the complainant named in the ſaid bill of complaint, and the ſaid *C. D.* named in the ſaid writ of *capias utlegatum* hereunto annexed, is one and the ſame perſon, and not diverſe and ſeveral: And therefore this defendant doth humbly demand the judgment of this honourable court, whether or no he ſhall be compelled to make any other or farther anſwer to the complainant's ſaid bill of complaint,

plaint, until the ſaid complainant ſhall have reverſed the ſaid outlawry, and thereby become a perſon of ability and capable to exhibit a bill of complaint againſt this defendant; and in the mean time this defendant prays to be diſmiſſed with his reaſonable coſts, in this behalf wrongfully ſuſtained.

Plea to a bill exhibited by a feme covert in her own name.

Sworn, *&c.*

The plea of E. F. *defendant, to the bill of complaint of* L. M. *complainant.*

THE ſaid defendant, not confeſſing all or any the matters and things in the complainant's ſaid bill of complaint contained to be true, in ſuch manner and form as they are therein and thereby ſet forth, for plea thereunto this defendant ſaith, That the plaintiff at and before the exhibiting her ſaid bill of complaint was married to one —— who is yet living, which this defendant doth aver and will prove, if there be occaſion; and therefore this defendant doth plead the ſame in abatement to the complainant's ſaid bill of complaint, and humbly craves the judgment of this honourable court, whether he ſhall make any anſwer thereunto; And humbly prays to be hence diſmiſſed with his coſts and charges, in this behalf ſuſtained.

A de-

A demurrer for want of equity.

The demurrer of C. D. *one of the defendants, to the bill of complaint of* A. B. *complainant.*

THIS defendant by proteſtation, not confeſſing or acknowleding all or any of the matters or things in and by the ſaid bill ſet forth and complained of to be true, in manner and form as the ſame are therein and thereby ſet forth and alledged, ſaith ſhe is adviſed by her counſel, that there is no matter or thing in the ſaid bill contained good and ſufficient in law to call this defendant in queſtion in this honourable court for the ſame, but that there is good cauſe of demurrer thereunto, and therefore this defendant doth demur thereunto, and for cauſe of demurrer this defendant ſaith, That the complainant's ſaid bill (in caſe the allegations therein contained were true, which this defendant doth in no ſort admit) contains not any matter of equity whereon this court can ground any decree, or give the complainant any relief or aſſiſtance, as againſt her this defendant; wherefore, and for diverſe other errors and imperfections in the ſaid bill appearing, this defendant doth demur in law thereunto; and humbly demands the judgment of this honourable court, whether ſhe ſhall be compelled to put in any farther or other anſwer to the ſaid bill; and humbly prays to be hence diſmiſſed with her reaſonable coſts, in this behalf moſt wrongfully ſuſtained.

A demurrer for want of parties.

The demurrer of C. D. *defendant, to the bill of complaint of* A. B. *complainant.*

AS to ſo much of the complainant's bill whereby the complainant doth intitle himſelf to, and demands from this defendant as executrix of *E. F.* in the bill named, the ſum of——and intereſt, under a letter of appointment, pretended to be directed to *G. H.* in the bill named by *J. K.* alſo in the ſaid bill named, and another defendant thereto; whereby the ſaid other defendant *K.* did direct the ſaid *H.* to pay——in the manner in the bill mentioned, and for that the ſaid *H.* as is pretended, had notice of an aſſignment in the bill mentioned of the ſaid ——to the complainant, and promiſed to pay the ſame: This defendant by proteſtation, not confeſſing or acknowledging the complainant's bill to be true, in ſuch ſort, manner or form, as the ſame matters are therein ſet forth, this defendant doth demur thereto, and for cauſe of demurrer ſheweth, That by the complainant's own ſhewing in his bill, the ſaid *G. H.* is dead, and neither his executor or adminiſtrator is made a party to the ſaid bill; and therefore, and for other good cauſe or cauſes of demurrer in the bill contained, as to ſo much of the complainant's ſaid bill as is demurred unto as aforeſaid, this defendant doth demand the judgment of this honourable court, whether this defendant ſhall be compelled to make any anſwer thereunto, otherwiſe than as aforeſaid. And this defendant humbly prays to be hence diſmiſſed with her coſts, in this behalf wrongfully ſuſtained.

A de-

A demurrer to a bill where it appears by the plaintiff's own ſhewing, that ſhe has no equity.

The joint and ſeveral demurrer of C. D. *and* E. F. *two of the defendants to the bill of complaint of* A. B. *widow, complainant.*

THE ſaid defendants by proteſtation, not confeſſing or acknowledging all or any of the matters or things in the complainant's ſaid bill of complaint to be true, in ſuch ſort, manner and form, as the ſame are therein and thereby ſet forth and alledged, for anſwer to the ſaid complainant's bill of complaint, theſe defendants do demur in law, and for cauſe of demurrer ſay, That it appears of the plaintiff's own ſhewing in her ſaid bill of complaint, that ſhe claims or pretends title to one third of the premiſſes in queſtion in the bill mentioned, as a perſon next in remainder in tail, under a deviſe in a will in the ſaid bill mentioned and ſet forth; which is a matter merely triable at law; and touching which the complainant may ſufficiently aſcertain her title by ejectment or ejectments to be brought at law; wherefore, and foraſmuch as the complainant's ſaid bill of complaint doth not contain (as theſe defendants are adviſed) any matter of equity ſufficient to eſtabliſh any right or demand againſt theſe defendants or either of them, nor to draw them in ſuit into this honourable court touching the matters complained of in the complainant's ſaid bill of complaint, and alſo for many other errors and imperfections in the complainant's ſaid bill of complaint contained, theſe defendants do demur in law thereunto, and humbly crave the judgment

judgment of this honourable court, whether they ought to make any anſwer to the ſaid bill of complaint; and humbly pray to be hence diſmiſſed with their coſts, in this behalf wrongfully ſuſtained.

A demurrer where the defendants are charged with felony or compounding felony.

The demurrer of the defendants C. D. G. H. *and* E. *his wife to part, and their anſwer to other part of the bill of complaint of* A. B. *complainant.*

AS to ſo much of the complainant's bill as ſeeks to charge theſe defendants or any of them with the concealing or compounding the felony in the bill mentioned, or as ſeeketh to compel any of theſe defendants to make any diſcovery touching the ſame, or any of the matters relating thereto, in the bill ſuggeſted or alledged, theſe defendants by proteſtation, not confeſſing or acknowledging any of the matters or things relating thereto in the ſaid bill comprized to be true, in ſuch ſort, manner and form, as therein the ſame are alledged or ſet forth, theſe defendants do demur, and for cauſe of demurrer ſhew, That they ought not to be compelled to diſcover or ſet forth any matters whereby they may impeach or accuſe themſelves of an offence or crime for which they may ſuffer corporal puniſhment, or be grievouſly fined; and therefore, and for diverſe other good cauſes of demurrer, in the complainant's ſaid bill of his own ſhewing appearing, theſe defendants, as to ſo much of the complainant's ſaid bill as before is ſet forth, do demur, and do demand the judgment of this honourable court, whether they,

or any of them, ought, or ſhall be compelled, to make any anſwer thereto, other, or otherwiſe than as aforeſaid; and humbly pray to be hence diſmiſſed with their coſts. And theſe defendants by way of anſwer do deny, *&c.*

A demurrer for want of parties, and for want of an affidavit, to a bill brought for a diſcovery of a deed.

The demurrer of A. B. *and* J. *his wife, defendants, to the bill of complaint of* C. D. *complainant.*

THE ſaid defendants by proteſtation, not confeſſing or acknowledging all or any the matters and things in the complainant's bill of complaint alledged and ſet forth to be true, in ſuch manner and form, as the ſame is and are thereby ſet forth, ſay, That they are adviſed that the ſubſtance of the ſaid bill is to diſcover a deed ſuggeſted to be made by ——— in the ſaid bill named, whereby ——— *per annum*, or ſome ſuch proviſion was made for the benefit and advantage of his younger ſons, and payable out of his lands, and that the plaintiff is the ſurvivor and intitled to the ſaid proviſion, and that the ſaid lands, upon the death of the ſaid ——— deſcended or came to his eldeſt ſon and heir ——— deceaſed, of whom the plaintiff, as is ſuggeſted, demanded the benefit of the ſaid deed; but before any benefit obtained, he the ſaid —— died, leaving two daughters his heirs, and that the plaintiff after the death of the ſaid ——— made his application to this defendant ——— the relict of the ſaid ——— and ſent the deed to her, and that the ſaid deed is now in the hands of the ſaid defendants, who by combination

bination with the ſaid daughters and heirs do refuſe to pay the plaintiff the ſaid proviſion made by his father and the arrears thereof, or permit him to enjoy the lands out of which the ſame is iſſuing, and therefore prays a diſcovery of the ſaid deed, and to have the arrears of the ſaid proviſion and farther relief: To which bill theſe defendants, as adviſed, do demur, and for cauſe of demurrer ſay, That the plaintiff ought according to the rules of this court to have made affidavit that he had not in his cuſtody or power the deed of which he ſeeks a diſcovery, and for want whereof he prays relief in this court; and alſo for that the ſaid complainant ſeeks relief for arrears of a proviſion of —— *per annum*, or ſome other proviſion made by the ſuppoſed deed, and to have relief in this court, to make good the ſame for the future, and yet hath not made the executors or adminiſtrators, nor the heirs of the ſaid ——— parties to his bill, who are (as theſe defendants are adviſed) the proper perſons intitled and intereſted to conteſt the ſaid arrears or future payment thereof, and the relief prayed in and by the complainant's ſaid bill: And although he hath taken notice in his bill of the ſaid daughters and heirs, yet hath he not made them defendants, nor prayed any proceſs againſt them: Wherefore, and for many other errors and defects in the ſaid bill, the ſaid defendants do demur in law, and do humbly pray the judgment of this honourable court, whether they ſhall be compelled to make any other or farther anſwer thereto; and do alſo humbly pray to be hence diſmiſſed, *&c.*

A demurrer for that the plaintiffs have not intitled themſelves to proſecute.

THE ſaid defendants by proteſtation, not confeſſing or acknowledging all or any of the matters or things in the complainants bill of complaint contained to be true, in ſuch manner, ſort and form, as the ſame are therein and thereby ſet forth and alledged, do demur thereunto, and for cauſe of demurrer ſhew, That the ſcope and end of the complainants bill is to be relieved touching ſeveral ſums of money by the ſaid bill ſuppoſed to be due from theſe defendants to one ——— deceaſed, in the ſaid bill named, which the complainants would, or ſeek by their ſaid bill to claim as executors to the ſaid ——— and yet have not alledged in or by their ſaid bill, that they have proved the will of the ſaid ——— (if any ſuch was made) or otherwiſe taken upon them the burden or execution thereof, or any ways intitled themſelves unto her perſonal eſtate, and to ſue for the ſame: Wherefore, and foraſmuch as the ſaid complainants have not well and ſufficiently intitled themſelves in and by their ſaid bill to the ſaid money (if any had been due from theſe defendants or either of them to the ſaid ———) as is thereby ſuppoſed, and for that, ſhould theſe defendants pay the money demanded by the ſaid bill to the complainants before they have either proved the will or ſued out adminiſtration, they cannot ſufficiently, as theſe defendants are adviſed and inſiſt, diſcharge theſe defendants, nor give theſe defendants any proper receipt or receipts for the ſame, but that they ſhall or may be liable to be queſtioned again by ſuch perſon as may ſue out adminiſtration to the

ſaid

ſaid —— with the ſaid will annexed, or otherwiſe, for which and divers other cauſes theſe defendants do demur in law unto the complainants ſaid bill of complaint, and all the matters and things therein contained; and humbly demand the judgment of this honourable court, whether they, or either of them, ſhall be compelled to make any other or farther anſwer thereunto; and pray to be hence diſmiſſed with their coſts, *&c.*

Demurrer to a bill ſeeking to have a will eſtabliſhed, and to perpetuate the teſtimony of witneſſes, and praying relief.

The demurrer of A. B. *and* C. D. *defendants, to part, and their anſwer to other part of the bill of complaint of* E. F. *complainant.*

THE ſaid defendants by proteſtation, not confeſſing or acknowledging all or any of the matters and things in the complainant's bill mentioned to be true, in ſuch manner and form, as the ſame are therein ſet forth, as to ſo much of the ſaid bill as ſeeks to have the will of —— deceaſed, in the ſaid bill named, eſtabliſhed againſt theſe defendants by the decree of this honourable court, theſe defendants do demur, and for cauſe of demurrer do ſhew, That it appears by the ſaid complainant's own ſhewing in and by the ſaid bill, that the ſaid complainant hath not any equity or title whereon ſuch decree can be grounded or made againſt theſe defendants, or either of them, and the validity of the ſaid will is a matter properly triable at law; wherefore, and for divers other errors and imperfections appearing in the ſaid bill, theſe defendants do demur to ſo much and ſuch part of the ſaid bill as

aforeſaid, and humbly pray the judgment of this honourable court, whether they ſhall be compelled to make any anſwer to ſuch part of the ſaid bill as is ſo demurred unto. And as to the reſidue of the ſaid bill, theſe defendants reſpectively ſaving and reſerving to themſelves all benefit and advantage of exception to the imperfections and inſufficiencies thereof, do ſeverally anſwer and ſay, *&c.* —— They deny that the teſtator made a will, and believe he was impoſed upon in making the ſame, and inſiſt that they the defendants, as heirs at law to the ſaid teſtator, are intitled to his freehold and copyhold eſtates, in the complainant's bill mentioned, *&c.*

A demurrer put in by three defendants to a bill exhibited againſt them and others, for ſeveral and diſtinct matters that have no relation to each other, and wherein they are not intereſted.

The demurrer of M. N. R. S. *and* W. N. *three of the defendants, to the bill of complaint of* A. B. *complainant.*

THESE defendants by proteſtation, not confeſſing or acknowledging all or any of the matters or things in the ſaid complainant's bill ſet forth to be true, in ſuch ſort, manner and form as the ſame are therein and thereby ſet forth and alledged, for demurrer thereunto theſe defendants ſeverally ſay, That it appears by the ſaid bill, that the ſame is exhibited againſt theſe defendants and —— and —— for ſeveral and diſtinct matters and cauſes that have no relation to or dependance upon each other, and wherein, as it appears by the bill, neither of theſe defendants are

in

in any manner intereſted or concern'd, by reaſon of which matters the complainant's bill is ſpun out to a great length, and theſe defendants forced to take a copy of the whole, and by the mingling defendants and cauſes together in one bill, in the progreſs of the ſuit, the pleadings, orders and proceedings will be intricate and prolix, and theſe defendants put to unreaſonable and unneceſſary charges in taking copies thereof; for which reaſons, and for divers other errors and imperfections in the ſaid bill appearing, theſe defendants do demur to the ſaid bill of complaint, and humbly demand the judgment of this honourable court, whether they ſhall be compelled to make any farther or other anſwer thereunto; and humbly pray to be hence diſmiſſed with their coſts.

A demurrer, plea and anſwer to a bill ſeeking relief againſt a will, whereby a perſonal eſtate is deviſed, being proved in the eccleſiaſtical court, and the will pleaded in bar, and for want of equity.

The joint and ſeveral demurrer *of* S. N. *and* E. *his wife, to part, and the* plea *of the ſaid* S. N. *to part; and the joint and ſeveral* anſwer *of the ſaid* S. N. *and* E. *his wife to other part of the bill of complaint of* M. B. W. T. *and* J. M. *and* S. *his wife, complainants.*

THESE defendants *S. N.* and *E.* his wife, by proteſtation, not confeſſing or acknowledging all or any the matters and things in the ſaid bill of complaint to be true, in ſuch ſort and manner as the ſame are therein expreſſed and

contained, as to ſo much of the ſaid bill as ſeeks to ſet aſide or impeach, or have any relief againſt the will of *R. R.* in the bill named, as to the perſonal eſtate of the ſaid *R. R.* or that ſeeks any diſcovery from theſe defendants, or either of them, in relation to the ſaid will, or that prays an *injunction* againſt this defendant *S. N.* to ſtop his proceedings at law againſt the ſaid *W. T.* theſe defendants do demur thereunto, and for cauſe of demurrer ſhew, That it appears by the complainants own ſhewing, that this defendant *S. N.* hath proved the ſaid will of the ſaid *R. R.* in the prerogative court of the Archbiſhop of *Canterbury*; and theſe defendants are adviſed that the probate of wills relating to eſtates, and particularly relating to perſonal eſtates, do properly belong to the eccleſiaſtical courts of this realm, and that the ſame ought not to be called into queſtion in this honourable court: And for further cauſe of demurrer theſe defendants ſhew, that there is not, as they are adviſed, any matter or thing ſet forth in and by the ſaid bill as a foundation of equity for this court to interpoſe, in relation to the action at law commenced by this defendant *S. N.* againſt the ſaid *W. T.* but what is properly cogniſable at law, and that the ſaid complainant may have the benefit of, upon a trial at law, if the ſame is true; for which reaſon, and for divers other cauſes, theſe defendants do demur to ſo much of the ſaid bill as aforeſaid, and humbly pray the judgment of this honourable court, whether they ſhall make any further or other anſwer thereto. *And* as to ſo much of the ſaid bill as ſeeks to have a diſtribution of the perſonal eſtate or effects of the ſaid *R. R.* according to the ſtatute of diſtribution of inteſtates eſtates, or that ſeeks to have any account or diſcovery of or from this defendant *S. N.* of the

perſonal eſtate of the ſaid *R. R.* this defendant *S. N.* doth plead thereunto, and for plea this defendant ſaith, That the ſaid *R. R.* did in his life-time, on or about the —— day of ——— in the year of our Lord —— as this defendant believes, duly make and publiſh his laſt will and teſtament in writing, and thereby, after having given ſeveral legacies therein particularly mentioned, gave and bequeathed all the reſt and reſidue of his real and perſonal eſtate unto this defendant, to hold to him, his heirs and aſſigns for ever, and of the ſaid will made this defendant ſole executor; And this defendant alſo, after the death of the ſaid teſtator, proved the ſaid will in the prerogative court of the Archbiſhop of *Canterbury*, as by the probate thereof, under the ſeal of the ſaid court, now in the cuſtody or power of this defendant, ready to be produced, as this honourable court ſhall direct, and to which this defendant craves leave to refer, doth more fully and at large appear. All which ſaid matters and things this defendant doth aver, and is ready to prove, as this honourable court ſhall direct, and doth plead the ſame in bar to ſo much of the ſaid bill as for that purpoſe is herein before mentioned, and humbly craves the judgment of this honourable court, whether he ſhall make any further or other anſwer thereto. *And* as to ſo much of the ſaid bill as theſe defendants have not before reſpectively demurred or pleaded unto, theſe defendants in no ſort waving the benefit of their ſaid demurrer and plea, or either of them, but wholly relying and inſiſting thereon, theſe defendants for anſwer to the reſidue of the complainants ſaid bill, or to ſo much thereof as theſe defendants are adviſed is material or neceſſary for them, or either of them, to make anſwer unto, theſe defendants each ſpeaking for him and herſelf,

ſelf, and not the one for the other, they theſe defendants do ſeverally anſwer and ſay as follows, *&c.*

CHAP. X.

The form of ſpecial commiſſions and Writs.

A commiſſion to aſſign a guardian for an infant, the guardian formerly aſſigned being dead.

GEORGE, &c. To, *&c.* Greeting. Whereas *A. B.* complainant, hath lately exhibited his bill of complaint before us in our court of *Chancery* againſt *C. D.* defendant: And whereas we have by our writ commanded the ſaid defendant to appear before us in our ſaid *Chancery* at a certain day now paſt to anſwer the ſaid bill; but foraſmuch as the ſaid defendant, being an infant under the age of one and twenty years, could not anſwer the ſaid bill, nor defend this ſuit without having a guardian aſſigned in that behalf, a commiſſion iſſued out of our ſaid court for aſſigning him a guardian for that purpoſe, and he accordingly put in his anſwer by *E. F.* his guardian (who is ſince dead); Know ye therefore, that in purſuance of an order of our ſaid court dated the —— day of ——— we have given unto you, any three or two of you, full power and authority to aſſign a new guardian for the aforeſaid defendant

fendant the infant, by whom he may defend this ſuit: And therefore we command you, any three or two of you, that at ſuch certain day and place as you ſhall think fit, you go to the ſaid defendant, if he cannot conveniently come to you, and aſſign and appoint a guardian for the ſaid defendant the infant; and when you ſhall have ſo done, that you certify the name of ſuch guardian, and your having aſſigned and appointed ſuch guardian, fairly and diſtinctly wrote upon parchment; and ſend the ſame cloſed up under the ſeals of you, any three or two of you, unto us in our ſaid *Chancery* —— whereſoever it ſhall then be, together with this writ. *Witneſs*, &c.

Indorſe, *By order of court.*

A commiſſion to take a lunatick's anſwer by his committees.

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *A. B.* and others, complainants, have lately exhibited their bill of complaint before us in our court of *Chancery* againſt *C. D.* defendant: And whereas we have by our writ lately commanded the ſaid defendant to appear before us in our ſaid *Chancery* at a certain day now paſt to anſwer the ſaid bill; but foraſmuch as the ſaid *C. D.* the defendant is a lunatick, and cannot anſwer the ſaid bill nor defend this ſuit but by his committees aſſigned him in that behalf; Know ye therefore, that we have given unto you, any three or two of you, full power and authority, in purſuance of the ſpecial order of our ſaid court, to take the anſwer of the ſaid *C. D.* a lunatick, by *E. F.* and *G. H.* his committees already aſſigned and appointed him by our ſaid court, to the ſaid bill; And therefore we command

command you, any three or two of you, that at ſuch certain day and place, as you ſhall think fit, you go to the ſaid defendant, if he cannot conveniently come to you, and take the anſwer of the ſaid defendant by the ſaid *E. F.* and *G. H.* his committees already aſſigned and appointed, to the ſaid bill, on the corporal oaths of the ſaid committees upon the Holy Evangeliſts, to be adminiſtred by you, any three or two of you, the ſaid anſwer being diſtinctly and plainly wrote upon parchment: And when you ſhall have ſo taken the ſaid anſwer, you are to ſend the ſame cloſed up under the ſeals of you, any three or two of you, and this writ, unto us in our ſaid *Chancery* —— whereſoever it ſhall then be. *Witneſs* Ourſelf at *Weſtminſter* the —— day of —— in the —— year of our reign.

Indorſe, *By order of court.*

A ſpecial commiſſion to divide lands.

GEORGE the ſecond, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. Whereas by a certain order bearing date the —— day of —— in the —— year of our reign, and in the year of our Lord ——, made and pronounced before us in our court of *Chancery* on hearing of certain cauſes between *J. K.* plaintiff, and *L. M.* defendant, and between the ſaid *L. M.* plaintiff, and *J. K.* defendant, It was ordered and decreed that a commiſſion of partition ſhould iſſue, directed to commiſſioners to be therein named, who were to divide the ſeveral lands and premiſſes therein mentioned, lying and being in ——, *&c.* into moieties; and alſo to divide into moieties the ſaid ſeveral lands and premiſſes therein mentioned to be lying and being in ——, *&c.* all which ſaid lands and premiſſes lye in the county of ——, and late

late were the eſtate of *N. O.* Know ye therefore, that we, in confidence of your prudence and fidelity, have appointed you, and by theſe preſents do give unto you, any three or two of you, full power and authority at ſuch time or times as you ſhall think fit and convenient, to enter into and upon, and to look over and view all and ſingular the aforeſaid lands, hereditaments and premiſſes in the ſaid order mentioned, lying and being in——, *&c.* and the ſame into two equal parts or moieties to divide, and the parts ſo divided to diſtinguiſh and ſeparate by certain metes and bounds; and one moiety of the ſaid lands and premiſſes to allot unto the ſaid *J. K.* and his heirs, and the other moiety of the ſaid lands and premiſſes to allot unto the ſaid *L. M.* and his heirs and aſſigns, to the ſame uſes upon which the undivided moiety thereof now ſtands limited by indentures of leaſe and releaſe, bearing date the —— and —— days of ——; and alſo in like manner to enter in and upon, and to look over and view all and ſingular the aforeſaid lands, hereditaments and premiſſes in the ſaid order mentioned, lying and being in ——, *&c.* and the ſame into two equal parts or moieties to divide, and the parts ſo divided to diſtinguiſh and ſeparate by certain metes and bounds; and one moiety of the ſaid lands and premiſſes in ——, *&c.* to allot unto the ſaid *J. K.* and his heirs, and the other moiety of the ſaid laſt mentioned lands and premiſſes to allot unto the ſaid *L. M.* and his heirs: And therefore we command you, any three or two of you, to meet and aſſemble together at certain convenient days and hours which ye ſhall appoint for that purpoſe, to enter into and upon the ſaid lands, hereditaments and premiſſes, and to walk over and view the ſame: And if it ſhall appear neceſſary, we hereby impower and authorize you, any three or two of you,

you, to examine ſeparately upon their oaths upon the Holy Evangeliſts (which we hereby impower you, any three or two of you to adminiſter) all ſuch witneſſes as ſhall be produced by the ſaid parties, or either of them, upon ſuch interrogatories, as they, or either of them, ſhall exhibit to you touching the matters aforeſaid; and the examinations of ſuch witneſſes to the ſaid interrogatories to take in writing in parchment; and when you, any three or two of you, ſhall have taken ſuch examinations or depoſitions, you are hereby, and by ſuch other lawful ways and means as you can beſt diſcover the truth, to make ſuch ſeparate diviſions of the aforeſaid lands, tenements, hereditaments and premiſſes into two equal parts or moieties, and to ſeparate, diſtinguiſh, and ſet out the reſpective moieties of ſuch diviſions from the other of them by proper metes and bounds; and to allot and appoint one of the ſaid moieties on each ſuch diviſion to the ſaid *J. K.* and his heirs, and the other moiety of the ſaid reſpective lands and premiſſes in ——, to the ſaid *L. M.* to the uſes aforeſaid; and the other moiety of the ſaid lands and premiſſes at ———, *&c.* to the ſaid *L. M.* and his heirs: And when you ſhall have done and performed theſe things, then you are to return to us in our ſaid court of Chancery, in —— whereſoever it ſhall then be, a certificate of all your actings and proceedings in the premiſſes, diſtinctly and plainly wrote on parchment, together with the ſaid depoſitions, interrogatories, and this writ cloſed up under the hands and ſeals of you, any three or two of you: And we further command you, and every of you, that before you act in, or be preſent at the ſwearing or examining any witneſs or witneſſes, you do ſeverally take the oath firſt ſpecified in the ſchedule hereunto annexed; And we give you, any three, two, or one of you, full

full power and authority, jointly or ſeverally, to adminiſter ſuch oath to the reſt or any other of you upon the Holy Evangeliſts: And we further command, that all and every the clerk or clerks employed in taking, writing, tranſcribing, or ingroſſing the depoſition or depoſitions of witneſſes to be examined by virtue of theſe preſents, ſhall, before he or they be preſent at ſuch examination, ſeverally take the oath laſt ſpecified in the ſchedule hereunto annexed; and we alſo give you, or any one of you, full power and authority jointly or ſeparately, to adminiſter ſuch oath to ſuch clerk or clerks upon the Holy Evangeliſts. *Witneſs*, &c.

Writ of aſſiſtance.

GEORGE the ſecond, *&c.* To the ſheriff of *L.* as well at preſent as for the future, greeting. Whereas according to the tenor and true meaning of our writ of execution of a decree, and alſo of our writ of injunction made out and iſſued under our great ſeal of *Great Britain*, in a certain cauſe depending in our court of Chancery, between *A. B.* and *E.* his wife, plaintiffs, and *C. D.* defendant, the ſaid *C. D.* was decreed and injoined to deliver poſſeſſion to the ſaid *A. B.* and *E.* his wife, of the meſſuage, lands and premiſſes in the pleadings in the ſaid cauſe mentioned; yet he the ſaid *C. D.* and other ill diſpoſed perſons his accomplices, have refuſed to pay obedience thereto, and detain and keep the poſſeſſion of the ſaid meſſuage, lands and premiſſes, in manifeſt contempt of Us, and our ſaid court: Know ye therefore, that we being willing and deſirous that juſtice ſhould be done to the ſaid *A. B.* and *E.* his wife in this behalf, do give unto you full power and authority to place and put the ſaid *A. B.* and *E.* his

his wife, and their assigns, without delay, into the full, peaceable and quiet possession of all and singular the said messuage, lands and premisses, with their appurtenances; and from time to time, as often as there shall or may be occasion, to maintain and keep them and their assigns in such peaceable and quiet possession, according to the intent and true meaning of the said decree and injunction of our said court; and therefore we do hereby command and injoin you, that immediately after your receipt of this our commission, you do go and repair and enter into and upon the said messuage, lands and premisses, and that you do remove, eject and expel the said *C. D.* his tenants, servants and accomplices, each and every of them, out of and from the said messuage, lands and premisses, and every part and parcel thereof; and that you do place and put the said *A. B.* and his wife, and their assigns, into the full, peaceable and quiet possession thereof, and defend and keep them and their said assigns in such peaceable and quiet possession, when and as often as any interruption may or shall from time to time be given, or offered, to them or any of them, according to the true intent and meaning of the said decree and injunction: And herein you are not in any wise to fail. *Witness*, &c.

Indorse, *Writ of assistance.*

B. and his wife against D.

CHAP.

CHAP. XI.

Interrogatories.

Interrogatories for proof of a will. *Vide* Bill and Anſwer, *ante.* 121.

Interrogatories to be adminiſtred to witneſſes, to be produced, ſworn and examined in a certain cauſe now depending and at iſſue in the high court of Chancery, wherein G. S. *Eſq; (an infant under the age of* 21 *years, by* M. S. *widow, his mother and next friend,) is complainant, and* J. S. *(an infant under the age of* 21 *years, by* W. M. *his guardian,) is defendant, on the part and behalf of the complainant, as follows.*

1. DO you know the parties complainant and defendant in the title of theſe interrogatories named, or either, and which of them, and how long have you known them reſpectively? And did you know *J. S.* Eſq; deceaſed, late father of the complainant and defendant, in his life-time, and how long did you know him before his death, and when and where did the ſaid *J. S.* the father die, as you know or believe? Declare.

2. Do you know that the ſaid *J. S.* the father in his life-time did make his laſt will and teſtament in writing under his hand and ſeal; if yea, when and where did he ſo make the ſame, and how long before his death was the ſame made; Do the

words following, *(to wit) In the name of God, Amen*, &c. [*here ſet forth the will* verbatim] contain or expreſs the laſt will and teſtament of the ſaid *J. S.* the father, as you know or believe? Declare.

3. Do you know the paper or parchment writing now produced and ſhewn unto you, and marked with the letter (A); if yea, doth the ſame contain the laſt will and teſtament of the ſaid *J. S.* the father, as you know or believe; was you a witneſs to the ſaid will, and did you ſee the ſaid *J. S.* the father, ſign, ſeal, publiſh and declare the ſame to be his laſt will and teſtament, or not, and is your name ſubſcribed as a witneſs thereto of your own proper hand-writing, or not? if yea, who were the witneſſes thereto, and did you and the other perſons, who are witneſſes to the ſaid will, ſubſcribe your names as witneſſes thereto in the preſence of the ſaid teſtator, and who were preſent at the executing of the ſaid will by the ſaid teſtator beſides yourſelf and the other witneſſes; and was the ſaid teſtator, at the time of the executing of the ſaid will, of ſound mind, memory and underſtanding, as you know or believe? Declare.

4. Do you know of any other matter or thing that may tend to the benefit and advantage of the complainant in this cauſe? if yea, declare the ſame as fully as if you had been thereunto particularly interrogated.

Inter-

Interrogatories *for examining of witneſſes for proving of a deed and bond, and other matters relating to an eſtate in poſſeſſion of the defendant.*

Interrogatories *to be exhibited to witneſſes, to be produced, ſworn and examined in a certain cauſe depending and at iſſue in the high and honourable court of* Chancery, *wherein* G. D. *Gent. is complainant, and* G. G. *Gent. defendant, on the part and behalf of the ſaid complainant, (as follows.)*

1. WHETHER do you know the parties complainant and defendant in the title of theſe interrogatories above-named, or either and which of them? And whether did you know *T. G.* late of —— in the county of —— Gent. deceaſed? And if yea, for how long did you know him, and when, and how long ſince did the ſaid *T. G.* depart this life? Set forth, and according to the beſt of your knowledge, remembrance and belief herein fully and at large declare.

2. Did you ſee the parchment deed or writing, now produced and ſhewn to you at this the time of your examination marked letter *A.* ſigned, ſealed and delivered, and by whom? And whether is your name, and the name or names of the other perſon or perſons, ſet as ſubſcribing witneſſes thereto, of your and their reſpective handwriting? And whether was the conſideration-money, mentioned in the ſaid produced deed or writing, paid or ſatisfied, and when, and by whom, and to whom? Set forth, and according to the beſt of your knowledge, remembrance and belief

lief herein, with the reaſons and circumſtances thereof, fully and at large declare.

3. Do you know the lands and premiſſes in the parchment deed or writing now produced and ſhewn to you, or any, and what part thereof? If yea, whether is the defendant *G. G.* in the receipt of the rents and profits thereof, or of any, and what part thereof? or who is in the poſſeſſion thereof, or in the receipt of the rents and profits? Hath the ſaid defendant been in the poſſeſſion thereof ſince the ſaid *T. G.*'s death? If yea, when did he take poſſeſſion thereof, and when did he quit the ſame, and whether does the ſaid defendant claim or pretend any and what right and title thereto, or to any and what part thereof, and by and under whom, and in what manner, and by what means, and how? Set forth according to the beſt of your knowledge and belief herein, and the particular reaſons and circumſtances thereof fully and at large declare.

4. Did you ſee the bond or paper-writing, now produced and ſhewn unto you at this time of your examination, marked lett. *B.* ſigned, ſealed and delivered, and by whom; and whether is your name, and the name or names of the other perſon or perſons, ſet as ſubſcribing witneſſes thereto, of your and their reſpective hand-writing; and whether was the money, mentioned to be ſecured by the ſaid produced bond or paper-writing, paid and ſatisfied, and by whom, and to whom, and when and how and in what manner? Did the defendant by himſelf or any other perſon make application to the complainant to advance and lend *T. G.* deceaſed the obligor in the ſaid bond, any ſum or ſums of money? If yea, when and by whom and to whom was ſuch application made, and by whoſe order? Set forth according to the beſt of your knowledge and belief herein, and

the

the particular reaſons and circumſtances thereof fully and at large declare.

5. Was it at any time and when agreed by *T. G.* deceaſed, the obligor in the bond in the preceding interrogatory mentioned, and how and in what manner, that the ſaid bond or money thereby intended to be ſecured ſhould be a charge or chargeable upon or ſecured by any and what lands or eſtate? Set forth what you know or believe herein, and the particular reaſons and circumſtances thereof and relating thereto fully and at large declare.

6. Is there any other matter or thing which you know or believe to be neceſſary or material for the complainant to prove in this cauſe? If yea, ſet forth the ſame, and the particular reaſons and circumſtances of ſuch your knowledge and belief thereof fully and at large declare.

Interrogatories for examining of witneſſes, on the behalf of a defendant, for proving the execution of bonds, and money lent upon ſecurities, &c.

Interrogatories to be adminiſtred to witneſſes to be produced, ſworn and examined on the part and behalf of G. G. *Gent. one of the defendants to the original bill of complaint of* G. D. *Gent. complainant.*

1. DO you know the parties complainant and defendant, or any and which of them; and how long have you known them, or any and which of them? Declare the truth and your knowledge therein.

2. Did you know *T. G.* late of —— in the county of ——— deceaſed, and how long did

you know him before his deceaſe, and when or about what time did the ſaid *T. G.* die? Declare the ſame as you know or have been credibly informed and believe.

3. Were the bonds or writings, now ſhewed unto you, and marked with the letters *A. B. C. D. E. F.* or any and which of them, ſigned, ſealed and delivered in your preſence, and by whom? Were you a witneſs to the ſigning, ſealing and delivery of ſuch bond or bonds, or not? Is your name, ſubſcribed as a witneſs to the ſame, of your own proper hand-writing, or not? Are you acquainted with the character or hand-writing of the other ſubſcribing witneſs or witneſſes to the ſaid bond or bonds, or any and which of them? Do you know their names ſubſcribed thereto to be of their own hand-writing, or not? Declare all that you know or verily believe concerning the ſame.

4. Do you know of any and what ſum or ſums of money that was or were lent and paid by the defendant *G. G.* or by any perſon or perſons by his order, or on his account, to the ſaid *T. G.* in his life-time, or to any other perſon or perſons to or for his uſe, as the conſideration for entering into and executing any and what bond or bonds, or judgment, or other and what ſecurity or ſecurities to the ſaid *G. G.* and when was the ſame lent or advanced and paid? Or have you heard the ſaid *T. G.* acknowledge or declare any thing and what concerning the money due, or the conſideration for which the ſaid bond or bonds were given? Declare all that you know or have been credibly inform'd and believe concerning the ſame, with the reaſons and circumſtances that induce your belief.

5. Do you know of any and what ſum or ſums of money that was or were paid by the defendant

fendant *G. G.* or by any perſon or perſons by his order, or on his account, to you or to any other perſon or perſons, and whom by name, that was or were due from the ſaid *T. G.* to you or to any, and what other perſon or perſons on any and what bond or bonds, bills, notes, or any and what other ſecurity or ſecurities, or account? If yea, ſet forth the particular time or times when the ſame was or were paid? Declare all that you know and have been credibly informed and believe concerning the ſame, with the reaſons and circumſtances which induce your belief.

6. Do you know of any and what promiſe or offer that was at any time or times, and when and how often made by the defendant *G. G.* or by any perſon or perſons, and whom by name, by his order or direction, or for or on his behalf, to the complainant *G. D.* to pay off, ſatisfy and diſcharge any and what mortgage that was made by the ſaid *T. G.* in his life-time to the ſaid complainant *G. D.* of any and what eſtate in or near the town of ——— in the ſaid county of ——— formerly the eſtate of *G. G.* deceaſed? If yea, did the ſaid complainant accept of, or refuſe or reject ſuch offer or promiſe; or what did he ſay or pretend or inſiſt upon at the time or times of ſuch offer or promiſe? Declare all that you know or have been credibly informed and believe concerning the matters inquired after in this interrogatory, with the reaſons and circumſtances which induce your belief.

7. Do you know of any and what bond that was entered into and executed by the ſaid *T. G.* in his life-time for the payment of the ſum of ſeventy pounds and intereſt, or of any other and what ſum of money to the complainant *G. D?* If yea, was you preſent when the ſaid bond was executed, and did you ſee any and what ſum of

money advanced and paid to the ſaid *T. G.* or to any perſon, and whom by his order or for his uſe, either before or at or after the execution thereof, as or for the conſideration of the ſaid bond? Declare all that you know concerning the ſame.

8. Do you know of any other matter or thing, or have you heard or can you ſet forth any thing touching the matters in queſtion in this cauſe, that may tend to the benefit and advantage of the defendant *G. G.* beſides what you have been before interrogated unto, if yea? Declare the ſame fully and at large, as if you had been thereunto particularly interrogated.

Interrogatories to examine creditors.

Between A. B. *an infant, by his next friend, and others* —— *complainants,*

and

C. B. *an infant, by his guardian, and others* —— —— *defendants.*

Interrogatories exhibited before —— *Eſq; one of the Maſters of this honourable court, to be adminiſtred to the ſeveral creditors of* A. B. *Eſq; deceaſed, late father of the complainant* A. B. *and of the defendant* C. B. *in purſuance of the order made on the hearing of the ſaid cauſe.*

1. DID you, or any and what perſon or perſons under whom you claim, at any time, and when, pay, lend and advance any and what ſum or ſums of money, or ſell or deliver any and what goods or things to or for the uſe of the ſaid *A. B.* in his life-time, or do any and what buſineſs or work for the ſaid *A. B.* or how or in what

what manner, and upon what occaſion, and for what, came he the ſaid *A. B.* to be indebted unto you, or unto ſuch perſon or perſons under whom you claim? Declare as you know and believe.

2. Did he the ſaid *A. B.* give, acknowledge or make unto any perſon, and whom, any and what ſecurity or ſecurities for all or any and what part of ſuch monies ſo lent and advanced, goods or things ſold and delivered, or buſineſs or work done, or any of them as aforeſaid, or otherwiſe and how? Was or were the ſecurity or ſecurities, if any, ſo given, or executed at the time they reſpectively bear date, or at any other and what time in particular? Declare, *&c.*

3. Was all and every, or any and what part of the money in the ſaid ſecurity or ſecurities mentioned or intended to be ſecured thereby, or which you now claim or pretend to be due to you, really and truly lent, advanced and paid to the ſaid *A. B.* or any other perſon, and whom, for his uſe, and where, and when, and at what times reſpectively, and by whom and in whoſe preſence? Did or did you not for any time, and how long, keep back or retain all or any, and what part thereof in your hands, or in the hands of any other perſon, and who by name, by or with your privity, and why and upon what occaſion? Declare according to the beſt of your knowledge and belief herein.

4. Was and were the goods and things, or the buſineſs or work for which the ſaid ſecurity or ſecurities (if any) were given, or for which you now claim payment or ſatisfaction, really and truly ſold to, or done or performed for the ſaid *A. B.* and by his order, and by whom and when, and where reſpectively, and in whoſe preſence, or otherwiſe and how? Declare, *&c.*

5. Have you, or any other, and who by name, with your privity and conſent or direction, or for your uſe, or in truſt for you, at any time or times, and when, and in any and what manner, and where, and in whoſe preſence, or otherwiſe, had or received, or been allowed, or have ſet off, or ought, as you know or believe, or can recollect, to allow, deduct or ſet off any and what ſum or ſums of money, or any other and what payment, ſatisfaction, deduction or allowance, and how and in what manner, and by what means, of or for, or towards any and what part of the money in the ſaid ſecurity or ſecurities mentioned or intended to be thereby ſecured, or otherwiſe claimed or pretended to be due to you, by or from the ſaid *A. B.* or his eſtate? How much after all juſt allowances and deductions is really and truly now owing and remaining due to you by the ſaid *A. B.* or from or out of his eſtate, upon the ſaid ſecurity or ſecurities as aforeſaid, or any and which of them, or otherwiſe, and how and why? Declare according to the beſt of your knowledge and belief.

6. Was or were any and what judgment or judgments entered up againſt the ſaid *A. B.* in his life-time, in any and what court or courts, at the ſuit of any perſons, and whom, or any and what debt or debts, ſum or ſums of money, due or owing by or from the ſaid *A. B.* in his life-time, at any time or times, and when in particular, aſſigned to you, or any perſon and whom, in truſt for you? Did you at the time of aſſigning any ſuch judgment, debt, or ſum, or at any other and what time, pay the perſon aſſigning the ſaid judgment or judgments, debt or debts, ſum or ſums of money, or any other perſon, and whom for his or their uſe, any and what ſum or ſums of money for or in conſideration of ſuch

aſſignments

aſſignments reſpectively? Was or were the ſum or ſums of money mentioned in the reſpective aſſignments of ſuch judgments, debts and monies, to have been paid as the conſideration of ſuch reſpective aſſignments, and every part thereof, or any other and what ſum really and truly paid and advanced by you, for or upon account of ſuch aſſignments reſpectively; or did you return or pay back any and what part of ſuch ſum or ſums of money to the perſon or perſons who ſo aſſigned the ſaid judgment or judgments, debt or debts, ſum or ſums of money, or not? Declare.

Between C. B. ——————— *plaintiff*,
C. D. *and other defendants.*

An interrogatory for the complainant's examination, purſuant to the decree made in this cauſe.

HAVE you, or any other and what perſon or perſons, and who by name, at any time or times, and when, had or made, or cauſed to be had or made, and by whom, or been at any time or times, and when and where preſent, at the making of any and what inventory or appraiſement, inventories or appraiſements, of all and every, or any and what part of the goods and chattels, credits and perſonal eſtate of *A. B.* deceaſed; and what is become thereof, and of every part thereof; and where, and in whoſe hands or power is or are now, or late was or were the ſame, as you know or believe? Whether was any and what part of the goods, chattels, credits, things and perſonal eſtate of the ſaid *A. B.* and of what kinds and qualities reſpectively, omitted out of, or neglected or refuſed to be inſerted in ſuch inventories and appraiſements, or either

either and which of them, as you know or believe; and if by your privity or not, or by or with the order, privity or direction of any other, and what perſon or perſons, as you know or believe? Whether was any and what part or parts of the goods and particulars mentioned in ſuch inventories or appraiſements, or either and which of them, any wiſe, and how much in each particular undervalued, and appraiſed below the real values thereof, as you know or believe; and was the ſame done by the direction or approbation or with the privity of you, or any other perſon or perſons, and whom, as you know or believe? What was or were the full, utmoſt and real value and values of all and every ſuch particular and particulars, as was or were ſo undervalued or omitted, as you know or believe?

CHAP. XII.

Of the proceedings upon a commiſſion of lunacy.

AND firſt a lunatick, as before is obſerved in *vol.* 1. *fo.* 241. is a perſon who is ſometimes of good and ſound memory and underſtanding, and ſometimes not; *aliquanda gaudet lucidis intervallis.*

And the foundation for finding him a lunatick is, that he is not capable of the government of himſelf or his eſtate. But it is not ſufficient for the jury to find him of ſo weak an underſtanding, as to be incapable of managing his eſtate, without ſaying he is a lunatick, or of an unſound mind.

The

The method of procuring the commiſſion is firſt by two or more perſons making an affidavit, ſetting forth the ſtate and condition of the lunatick, with ſome few inſtances of his declarations and actions, to ſhew their belief of his being a lunatick, and incapable of governing himſelf or his eſtate.

The affidavit may be in this manner.

E. F. of, *&c.* and *G. H.* of, *&c.* ſeverally make oath and ſay, that they theſe deponents for the ſpace of one year laſt paſt have known and been well acquainted and frequently diſcourſed with *C. D.* of, *&c.* And theſe deponents further ſeverally ſay, that within the ſpace of —— laſt paſt they have by frequently obſerving the behaviour, words and actions of the ſaid *C. D.* looked upon him to be a perſon deprived of his reaſon and underſtanding in a very great degree; and this deponent *E. F.* ſaith, that, *&c.* [*Set forth ſome of the moſt notorious acts, incoherences and irrational diſcourſes*] And theſe deponents further ſeverally ſay, that they believe the ſaid *C. D.* is no ways capable of governing himſelf or his eſtate.

E. F.
G. H.

Sworn the — day of — 1744, *at the publick office before*

Then you muſt prepare a petition to the Lord Chancellor, the form whereof may be as follows:

The

The petition.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of A. B.

Sheweth,

THAT *C. D.* of, *&c.* [*name the lunatick, with his addition*] your petitioner's ſon [*or what other relation he is*] now is, and for the ſpace of —— months laſt paſt and upwards has been, ſo far deprived of his reaſon and underſtanding, that he is rendered altogether unfit and unable to govern himſelf, or to manage his affairs, as by the affidavit annexed appears.

Your petitioner therefore moſt humbly prays your Lordſhip will be pleaſed that a commiſſion in nature of a writ De lunatico inquirendo *may iſſue out of this honourable court, to inquire of the lunacy of the ſaid* C. D. *directed to ſuch perſons as your Lordſhip ſhall think fit.*

And your petitioner ſhall ever pray, &c.

This petition, with the affidavit annexed, is lodged with his Lordſhip's ſecretary of the lunaticks, who will get it anſwered for you.

And if the commiſſion is to be executed in the country, you muſt give in commiſſioners names to the ſecretary, which liſt muſt contain the names of five perſons, two or three of them barriſters, and

and the others attorneys, or ſuch as the Lord Chancellor will approve of, which the ſecretary will inform you; but if the lunatick lives in or near *London*, there are commiſſioners for that purpoſe appointed, and when you have procured the petition anſwered, you carry it to Mr. *Hammerſley*, who officiates as clerk of the cuſtodies, and he will thereupon make out the commiſſion, for which you pay him 3 *l.* 7 *s.* 6 *d.*

N. B. Where in the country, upon entring a caveat with the ſecretary, for which you pay 5 *s.* with proper allegations, the perſon againſt whom the commiſſion is prayed will have leave given him to preſent a liſt of commiſſioners as well as the party applying. And *Q.* whether he may not likewiſe pray a ſpecial jury as in common caſes.

The commiſſion being obtained, you appoint a place for the execution thereof, which, according to Lord Chancellor's order, ought to be near the place of the ſuppoſed lunatick's abode, and then you prepare a ſummons or precept, which is in nature of a *Venire facias*, directed to the ſheriff of the county, in which the commiſſion is to be executed, as follows:

The precept to the ſheriff.

BY virtue of a commiſſion in nature of a writ *De lunatico inquirendo* under the great ſeal of *Great Britain*, bearing date at *Weſtminſter*, *&c.* (*the date of the commiſſion*) to us, whoſe names are here under-written, and others in the ſame commiſſion named, directed, to inquire whether *C. D.* of, *&c.* be a lunatick, or not; Theſe are therefore to will and require you to cauſe to come and appear before us twenty-four honeſt and lawful men of the *city and liberty of Weſtminſter*, on the

25*th*

25*th day of* May next, by ten of the clock in the forenoon of the ſame day, at the houſe of *J. K.* ſituate *in a certain ſtreet or place there, called* Piccadilly, *and commonly called or known by the name or ſign of the* Gun Tavern; then and there upon their oaths to inquire of the lunacy of the ſaid *C. D.* and of all ſuch other matters and things as ſhall be given them in charge by virtue of the ſaid commiſſion; and therefore fail not at your peril. Given under our hands and ſeals the 30*th day of* April *in the* 17*th* year of the reign of our Sovereign Lord *George* the Second, by the grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* and in the year of our Lord 1744.

To the ſheriff of the county of Middleſex, *or his deputy.*

This you carry (having put three ſeals thereto) with the commiſſion to ſuch three of the commiſſioners as you ſhall think proper, who will ſign and ſeal it, for which you pay them one guinea each, and then lodge it at the ſheriff's office; and the jury ought to be of the *town* or *neighbourhood where the lunatick lives.*

If the lunatick is in cuſtody of any perſon who you are apprehenſive will not voluntarily produce him (for he muſt be preſent and examined by the jury *viva voce*) then you make out a warrant for that purpoſe, as follows.

A warrant to produce the lunatick.

BY virtue, *&c.* (*as before to*) Theſe are to will and require you to produce before us the ſaid *C. D.* at the execution of the ſaid commiſſion on, *&c.*

&c. (*as in the ſummons*) there to be examined touching the matters aforeſaid, and you are to give him notice of it accordingly; as alſo to any other perſon or perſons who are guardians of him or truſtees of his eſtate, that they may appear in his defence, if they ſhall think fit. Given under our hands and ſeals, *&c.*

To Mr. L. M. *or ſuch other perſon or perſons as now have the ſaid* C. D. *in their cuſtody or power.*

The commiſſioners ſign and ſeal this warrant without any fee, and then you are to make copies thereof, and ſerve it upon ſuch perſons as you believe, or can make appear, have the cuſtody of his perſon, or the direction and management of him or his eſtate at the time of ſervice, ſhewing the original.

But, in order to make the perſon who has the cuſtody of the ſuppoſed lunatick liable to a contempt, and to enforce the producing of the perſon of the ſuppoſed lunatick to the commiſſioners and jury, it is beſt to apply to the Lord Chancellor for an order for that purpoſe.

Alſo if you apprehend the witneſſes, or any of them, will not voluntarily attend, you make out a *ſubpœna* as follows.

The ſubpœna *for witneſſes.*

BY virtue, *&c.* (*as before to*) Theſe are to will and require you, that you perſonally be and appear before us on, *&c.* (*as in the ſummons*) then and there upon your oath to teſtify the truth according to your knowledge touching the lunacy of

the ſaid *C. D.* and of all ſuch matters and things as ſhall be demanded of you by virtue of the ſaid commiſſion. Hereof fail not at your peril. Given under our hands and ſeals, *&c.*

To A. B. C. D. &c.

This the commiſſioners alſo ſign and ſeal *gratis*, and then you make copies thereof, and ſerve it upon the witneſſes, ſhewing them the original.

Note, That the precept, warrant and *ſubpœna*, need not be upon ſtamped paper or parchment.

Upon the day of executing the commiſſion, you muſt take care to have your witneſſes ready, and the lunatick, attending the commiſſioners; and the jury being all ſworn, then you proceed to take the inquiſition thus, *viz.*

In the firſt place, you muſt read over the commiſſion, and then the commiſſioners will proceed to examine the witneſſes, and afterwards the lunatick (if neceſſary); but the lunatick may inſiſt on being examined, the commiſſioners and jury only being preſent.

Having gone through with the proofs, the chairman, or firſt commiſſioner, ſums up the evidence and facts to the jury, who thereupon give their verdict as in other caſes, and after the jury have given in their verdict, you fill up the blanks of the inquiſition, (which, for expedition ſake, is generally prepared before-hand with large blanks) according to the inqueſt, and then you read it over to them for their conſent, which is to be ſigned both by the commiſſioners and the jury.

Note; Counſel may attend at the execution of theſe commiſſions.

The form of an inquiſition.

Midd. ſſ. AN inquiſition taken at the houſe of *J. K.* ſituate in a certain ſtreet or place there called *Piccadilly*, and commonly called or known by the name or ſign of the *Gun Tavern* in the county aforeſaid, the 15th day of *May* in the 17th year of the reign of our Sovereign Lord *George* the Second, by the grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* and in the year of our Lord 1744. before *L. M. N. O.* Eſqrs. and *P. Q.* Gentleman, his ſaid Majeſty's commiſſioners, by virtue of a commiſſion in nature of a writ *de lunatico inquirendo* under the great ſeal of *Great Britain*, bearing date at *Weſtminſter* the 12th day of *April* laſt paſt, to them the ſaid commiſſioners and others in the ſaid commiſſion named directed, to inquire (amongſt other things) of the lunacy of *C. D.* of, *&c.* upon the oaths of *T. U. &c.* (*inſert the names of all the jurors*) good, honeſt and lawful men of the ſaid county of *Middleſex*, who being ſworn and charged upon their oaths ſay, that the ſaid *C. D.* is at the time of taking this inquiſition a lunatick, (or of an unſound mind) and doth not enjoy lucid intervals (*as the jury find him*) ſo that he is not capable of the government of himſelf, his manors, meſſuages, lands, tenements, goods and chattels, and that he hath been in the ſame ſtate of lunacy for the ſpace of —— laſt paſt, and upwards; but how or by what means the ſaid *C. D.* ſo became lunatick the jurors aforeſaid know not, unleſs by the viſitation of God: And the ſame jurors upon their oaths further ſay, That they do find that the ſaid *C. D.* at the time of taking this inquiſition, is ſeiſed of or intitled unto one meſ-

A commiſſion of lunacy muſt not be *ſpecially* returned; he muſt be found *mad*, or *not mad*. S. C. Chan. 47.

ſuage, &c. (*the premiſſes he is found ſeiſed of or intitled unto*) which deſcended to him as, &c. And alſo that the ſaid *C. D.* hath not alienated any of his lands or tenements during his lunacy aforeſaid, to the knowledge of the ſame jurors. And the ſame jurors upon their oaths further ſay, That the ſaid *C. D.* is, at the time of taking this inquiſition, alſo poſſeſſed of or intitled unto (*ſet forth what perſonal eſtate*). And laſtly, the ſame jurors do find, that *G. H.* of, &c. is brother and nearer heir to the ſaid *C. D.* and that the ſaid *G. H.* at the time of taking this inquiſition, is of the age of —— or thereabouts. In teſtimony whereof, as well the ſaid commiſſioners, as the jurors aforeſaid, have to this inquiſition ſet their hands and ſeals the day and year firſt above-written.

This inquiſition is generally writ ſheet-wiſe on unſtamped paper, and is ſigned by the commiſſioners and all the jurors, &c. on which you pay to the commiſſioners, if in town, two guineas each, and to the jury half a guinea a-piece, to the ſheriff two guineas, and to the ſummoning bailiff one guinea; but in the country it is uſual to give more, and pay the ſheriff the ſame as you do the commiſſioners.

Then you muſt prepare an ingroſſment of the inquiſition upon parchment, ſtamped with a treble ſixpenny ſtamp, and annex it to the commiſſion, which you return, on the back, writing theſe words, "*The execution of this commiſſion appears by "the inquiſition hereunto annexed*", which the commiſſioners ſign, and then fixing labels and ſeals to the bottom of the inquiſition, three for the commiſſioners on the left hand ſide, and likewiſe one for every one of the jurors, you carry it with the commiſſion annexed, and the inquiſition (which was ſigned by the commiſſioners and jury at the

time of taking) to the commiſſioners, who will ſign the return of the commiſſion, and ſign and ſeal the inquiſition, for which you pay them one guinea each; *but there is no occaſion for the jury to ſign this ingroſſment.*

When you have thus compleated your inquiſition, you muſt carry it to the petty-bag office to be filed, where they make you an office copy of the commiſſion and inquiſition upon double ſixpenny ſtamped paper, which you make uſe of on all occaſions, either in court or otherwiſe; for which you pay the following fees, *viz.* filing 2 *s.* 6 *d.* copying 8 *d. per* ſheet, and ſigning the copy 2 *s.*

Upon this, ſome near relation or friend petitions for the cuſtody of the lunatick's perſon, and in the ſame petition the perſon, who will be intitled to his real or perſonal eſtate at his death, prays the care and management of the lunatick's eſtate and effects.

But the cuſtody of the perſon is ſeldom or never granted to thoſe who are to take his eſtate immediately upon his death, but generally to the neareſt relation, who hath no right to his eſtate.

The petition for the cuſtody of the perſon, and the care and management of the lunatick's eſtate.

In the matter of *C. D.* a lunatick.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of *A. B.* of, *&c.* and *G. H.* of, *&c.*

Sheweth,

THAT purſuant to your Lordſhip's order of the *1ſt day of* April *laſt paſt*, made upon the petition of your petitioner *A. B.* a commiſſion in nature of a writ *De lunatico inquirendo* was iſſued out and directed to certain commiſſioners therein named, to inquire of the lunacy of *C. D.* of, *&c.* who is *ſecond ſon* of your petitioner *A. B. and firſt brother* of your petitioner *G. H. (as the caſe is).*

That the ſaid commiſſion hath ſince been duly executed on the 25th day of *May* laſt paſt, before the major part of the commiſſioners in the ſaid commiſſion named; and thereby it is found, that the ſaid *C. D.* was then a lunatick, and not capable of the government of himſelf, his manors, meſſuages, lands, tenements, goods and chattels, and ſo had been for —— laſt paſt; And it is by the ſaid inquiſition further found, that the ſaid *C. D.* was ſeiſed of or intitled unto a conſiderable real and perſonal eſtate, and that your petitioner *G. H.* is brother and nearer heir to the ſaid *C. D.* the lunatick, and at the time of taking

king the ſaid inquiſition was of the age of —— years.

That your petitioners being deſirous that the perſon and eſtate of the ſaid lunatick may be duly taken care of, in ſuch manner as is neceſſary and uſual in caſes of this nature.

Your petitioners therefore moſt humbly pray your Lordſhip, that the care and cuſtody of the perſon of the ſaid lunatick may be granted to your petitioner A. B. *and that the care and management of his eſtate may be granted unto your petitioner* G. H. *he giving ſuch ſecurity as is uſual in the like caſes.*

And your petitioners ſhall ever pray, &c.

This petition you lodge with the ſecretary of the lunaticks, and if his Lordſhip anſwers it in the affirmative, the committee of the perſon may demand the lunatick in whoſe cuſtody ſoever he be; and the committee of the eſtate having entered into a recognizance with ſufficient ſureties before a Maſter; the clerk of the cuſtodies will procure the commitment of his eſtate under the Great Seal.

But *Note*, that the perſon who is found a lunatick, or any perſon on his behalf, may nevertheleſs enter a *Caveat* with the ſecretary againſt the petition for the commitment of his perſon and eſtate, and may then petition the Chancellor, that the commiſſion may be ſuperſeded upon his being inſpected and examined in open court; which his Lordſhip will anſwer accordingly, and appoint a day for that purpoſe, againſt which time the lunatick ſhould procure affidavits of two or three

of the moſt eminent phyſicians, with regard to his *ſanity* and *capacity* of being able to take care of himſelf, and manage his eſtate; for the court will not, without pretty ſtrong evidence, ſuperſede the commiſſion after he is found a lunatick by the jury.

A commiſſion was granted to inquire of the *ideocy* or *lunacy* of the Lord *Wenman* (an *Iriſh* Lord) and they who had him in cuſtody refuſing to produce him before the commiſſioners, Lord C. *Macclesfield* ordered him to be produced; whereupon after great delays, and after Lord *Wenman*'s Lady (an *Iriſh* peereſs) had been ordered to attend, and it alſo appearing by affidavits that ſhe had been with her huſband, and been inſtrumental in removing him from place to place in order to evade his being produced, his Lordſhip ordered the Lady to be committed to the *Fleet*, ſaying, it was great *impudence* as well as *obſtinacy* in her, not to do what ſhe could for the producing her huſband, who upon the affidavits that had been made could not but be thought a lunatick. 1 *Will. Rep.* 701. Lord *Wenman*'s caſe.

Motion that a lunatick who had recovered his underſtanding might be inſpected, and make a ſettlement of his eſtate —— *Lord Keeper* refuſed to make any order in it, but directed that if he (the lunatick) made any ſettlement, it ſhould be done before the juſtices of the Common Pleas by fine, that they might examine him; and directed that as he was found a lunatick on record, they ſhould reply to it, *that he was now reſtored to his underſtanding*, that ſo iſſue might be taken upon it and tryed in *C. B.* 1 *Vern.* 155.

Upon application to be committee of the perſon, though it is not uſually granted to the next of kin, yet where his eſtate is perſonal, and may be improved by the continuance of his life, it is

no

no objection. *Peer Will.* 544. *Neal's* caſe.— And it is no objection with regard to a perſon who may be intitled to a diſtributive ſhare of the lunatick's perſonal eſtate. *Ibid.* 635. *Ex parte Ludlow.*

The cuſtody of the lunatick's eſtate was granted to baron and feme, ſhe being next of kin: The wife dies, the huſband's right to the cuſtody of the lunatick's eſtate is determined, *it being a joint grant* and *a mere authority without any intereſt. Ca. in Eq. Temp. Talb.* C. 143.

A committee may requeſt an allowance for the lunatick's children, as in the caſe of *Foſter* and *Merchant*, 1 *Vern.* 262. where it was requeſted for the lunatick's ſon, and referred to the maſter to ſee what was a proper maintenance.

If a committee inveſts the lunatick's perſonal eſtate in a purchaſe of lands in fee, this ſhall be taken as *perſonal* eſtate, and in caſe of the lunatick's death, ſhall go to his next of kin, and not to his heir. *Awdley* verſus *Awdley*, 2 *Vern.* 192.

Actions touching lunatick's lands ſhall be in his own name, for there is no intereſt gained in the land by the commitment, and the Lord hath no power over the lunatick's lands without a cuſtom. *Cocks* againſt *Darſon*, *Hob.* 215.

A bill will not lie in the lunatick's life-time to perpetuate the teſtimony of witneſſes to his will made before his lunacy. *Sackwill* verſus *Ayleworth*, 1 *Vern.* 105.

The courts above will grant no prohibition to probate of a will of lands and goods, on ſuggeſtion of *non compos* in the teſtator, 2 *Salk.* 552. becauſe it is a matter triable at common law.

A lunatick is never to be looked upon as deſperate or irrecoverable, and his comfort is to be regarded, and not his adminiſtrators or next of kin. Juſtice *Dormer's* caſe, *Will. Rep.* 264.

Laches

Laches cannot be imputed to the heir being lunatick, nor can mean rates run againſt him; and livery being due to him, the law preſumes that he would have ſued it, being for his benefit, if he had been *compos mentis*. *Burcher*'s caſe, *Hob.* 137.

If a lunatick kill a man, or the like, it is not felony; for felony muſt be done *animo felonico*; yet in treſpaſs, which only tends to give damages according to the hurt or loſs, it is not ſo; and therefore if a lunatick hurt a man, he ſhall be anſwerable in treſpaſs. *Weaver* verſus *Ward*, *Hob.* 134.

[For more concerning lunacy, *vid.* 2 *Vol. Abr. Eq.* 580.]

THE

THE TABLE TO THE SECOND VOLUME.

A.

Abatement. See *Bill of revivor*, *Vol.* 1. and *Vol.* 2.

See *Abatement*, *Vol.* 1.

AFFIDAVIT to procure a commiſſion of lunacy. *Page* 429

——— of ſerving *ſubpœna* to hear judgment. 79

See *Affidavit*, *Vol.* 1.

Amendment. See *Vol.* 1.

See *Amended bill*, *Vol.* 1.

Anſwer by an heir at law to a bill to prove a will. 141

——— to a bill of the like nature, inſiſting that teſtatrix was a papiſt. 147

——— to a bill for payment of a legacy, ſubmitting to pay the ſame under the indemnity of the court. 257

Anſwer

Anſwer to a bill of foreclosure. *Page* 379
——— of infants by their guardian. 382
——— and diſclaimer. 383
——— demurrer, plea and anſwer to a bill ſeeking relief againſt a will, *&c.* 407
one witneſs againſt defendant's anſwer not ſufficient. 43
See *Evidence.*
See *Anſwers*, *Vol.* 1.
Appeal in parliament, what. 128
——— how to appeal. *ibid.*
——— where an appeal cannot regularly be made. *ibid.*
——— new matter on an appeal admitted not formerly in proof. 129
——— againſt inrolling a decree, what. *ibid.*
——— how to be ſigned and lodged. *ibid.*
——— how to be argued. *ibid.*
——— the caſe on an appeal how to be ſigned and printed. *ibid.*
——— the form of petition to the Lords. 130
——— reſpondent's anſwer. 131
——— in parliament, a caſe on this head. 85
——— parliament being prorogued, may proceed in the account. 86
——— no appeal from the delegates, or from a decree on ſtatute of charitable uſes. *ibid.* 128
——— new trial granted by the Lords on an appeal. 86
Attachment. See *Attachment* and *Contempt*, *Vol.* 1.
Agreements, made a rule of court. 136

B.

BILL to prove a will againſt the heir at law. 137
——— another. 143

Bill againſt an executor for an account. *Page* 156
——— by creditors for an account of teſtator's perſonal eſtate, and to be paid their debts. *Page* 161
——— by huſband and wife for a bond debt to wife while ſole, againſt an heir at law and widow, for an account and ſatisfaction out of the real and perſonal eſtate of the teſtator. 170
——— by a creditor, as well on behalf of himſelf as other creditors who ſhall come in and contribute to the expence of the ſuit, to be paid debts, and for ſale of the teſtator's real eſtate in caſe his perſonal eſtate ſhall not be ſufficient, and to perpetuate the teſtimony of witneſſes. 177
——— to ſecure a jointure, and ſupply a defective execution of a power. 182
——— to perfect a marriage ſettlement, by a feme covert by her next friend and truſtees, with a concluſion againſt a peer. 200
——— for an account of rents and profits, and to redeem. 216
——— for redemption of a mortgage. 236
——— to foreclose. 242
——— by an infant by his next friend againſt executors for a legacy. 253
——— by an inteſtate's two daughters, to call the widow to an account for perſonal and real eſtate. 259
——— to diſcover a title, and ſet aſide a recovery and will ſuffered and made by a lunatick, by one co-heireſs againſt another, and that a mortgage made by the defendant may affect her part only, and to be relieved with regard to a partnerſhip debt, the partnerſhip being diſſolved. 266
——— to eſtabliſh the cuſtom of a manor. 277

Bill

Bill to open an account ſettled by inteſtate for fraud and dureſs. *Page* 284
for tithes. 305
to carry articles of agreement into execution, bargainor againſt bargainee, and for a ſpecific performance. 314
for a ſpecific performance of an agreement. 323
to revive and anſwer. 326
of revivor by an adminiſtratrix to revive the ſuit, wherein her huſband was plaintiff, who died pending the ſuit. 328
ſupplemental to deliver up deeds and writings. 331
of revivor, and ſupplemental. 334
another of revivor. 337
by an adminiſtratrix for an account, and to revive a decree and carry it into execution. 339
an information by the attorney general at the relation of the rector and churchwardens, relating to money given to charitable uſes. 349, 358
of interpleader. 369
a ſpecial concluſion to a bill exhibited againſt the attorney general and others. 378
Of revivor. See *Revivor*, and *Review*.

C.

OF *coſts* in general. 132 *to* 136
Commiſſion to aſſign a ſecond guardian. 410
to take a lunatick's anſwer by his committees. 411
commiſſioners and their clerks before they act to take an oath. 2

Commiſſion to examine, what, and reading thereon. *Page 7 to 23*

——— (the form of a *C*) to examine witneſſes. 16

Commiſſioners and clerks oath. 17, 18

A commiſſion to examine witneſſes touching a contempt. 18

——— to take a defendant's examination on interrogatories. 19

——— to examine witneſſes and divide lands. 20

——— to aſſign and ſet out dower. 22

——— on whom notice of executing a commiſſion to examine witneſſes muſt be ſerved. 25

——— ſpecial to divide lands. 412

——— when to be executed where it is returnable without delay. 23

——— label to commiſſion. *ibid.*

——— label to commiſſion when it is on the part of defendant, and plaintiff joins therein. *ibid.*

——— label to a commiſſion *ex parte*. *ibid.*

——— plaintiff arreſted two days before execution of commiſſion diſcharged, and defendant ordered to pay coſts and take out new commiſſion. *ibid.*

——— proceedings upon commiſſion to examine witneſſes *in perpetuam rei memoriam* the ſame as upon general ones. 24

——— of opening commiſſion, and proceedings thereon. *27 to 31*

——— of returning commiſſion, and fees. 30, 31, 32

[Of examining witneſſes in town, Vide *Evidence*.]

——— *of rebellion*. See *Commiſſion of rebellion* and *Contempt*, *Vol.* 1.

D.

DECREE, what, and how pronounced. *Page* 98 *to* 124
when it may be altered. *ibid.*
drawing it up, &c. 98
where minutes are not purſued, &c. 99
entring decree. 99
when a caveat is entred. *ibid.*
how and by whom to be ſigned and inrolled, and when to be ſigned. 99, 100, 101
where inrolled after defendant's death. 101
party committed for breach of a decree how to be enlarged. 101
from what time a decree is binding. *ibid.*
equal to judgments at law, and a decree againſt an executor preferred to a judgment at common law againſt him, if *prior* in time. 102
intereſt upon a ſum liquidated. *ibid.*
being inrolled cannot be varied but by bill of review. *ibid.*
where a decree is for an account, how to proceed. *ibid.* 103
if perſonal, may have execution, and how. 103
where for a foreclosure. *ibid.*
how time to be computed for redeeming. *ibid.*
how to compute intereſt on a decree. 104
who are bound by a decree. *ibid.*
after decree pronounced, accounts may be examined by a maſter. *ibid.*
when a decree is not within ſtatute of limitations. *ibid.*

Decree, where adminiſtrators obtain a decree and die before inrollment. *Page* 104
what it does not bind, and where it affects. 105
of lands to be entred within ſix months, or not to prejudice purchaſers. *ibid.*
where one purchaſes after bill exhibited, againſt the vendor, he does it at his peril. 105
where for huſband and wife, on huſband's death wife to have the benefit, and not executors. *ibid.*
one ordered to ſtand committed for a breach of a decree, the warden cannot take him without a writ. 106
where a decree will bind perſons not parties or privies. *ibid.*
where a mortgagee who was preſent at pronouncing decree pays money to an executor prohibited to act, ſhall pay it over again. *ibid.*
the form to be obſerved in drawing up a decree. 108
how upon bill and anſwer. *ibid.*
——— on a rehearing. 109
——— on diſmiſſions. *ibid.*
how and by whom ſigned. 110
how inrolled. *ibid.*
how executed. 111
where for land. 112
where for money. *ibid.*
if for producing deeds and writings, *&c.* 113, 114
words of courſe in a writ of execution of a decree. 114, 115
ſhort writ of execution of a decree. 116
how decrees are exemplified. 116 *to* 119
how revived. 119 *to* 122
how reviewed and reverſed. 123

Decree obtained againſt a defendant on one evidence where fraud is plain. *Page* 106
to account to firſt adminiſtrator, ſecond may carry it on. *ibid.*
equity will not decree an award unleſs of all matters referred. *ibid.*
inrolled or not, pleadable. *ibid.*
matter aſſigned for error muſt appear in the decree. 107
abatement no error to reverſe a decree. *ibid.*
Cur' will inforce the execution of its own decrees. *ibid.*
See *Reviving decrees.*
Demurrer lies not to a bill to perpetuate. 39
for want of equity. 398
for want of parties. 399
to a bill where it appears by plaintiff's own ſhewing, ſhe has no equity. 400
where defendants are charged with felony, *&c.* 401
for want of parties, and for want of an affidavit to a bill brought for a diſcovery of a deed. 402
for that plaintiffs have not intitled themſelves to proſecute. 404
to a bill ſeeking to have a will eſtabliſhed, and to perpetuate the teſtimony of witneſſes, and praying relief. 405
put in by three defendants, to a bill exhibited againſt them and others, for ſeveral and diſtinct matters that have no relation to each other, and wherein they are not intereſted. 406
plea and anſwer to a bill ſeeking relief againſt a will, whereby a perſonal eſtate is deviſed, being proved in the eccleſiaſtical court, and

and the will pleaded in bar and for want of equity. *Page* 407

[See *Demurrer*, *Vol.* 1.]

Depoſitions, title of depoſitions. 27

not to be read, unleſs taken out of the proper office and ſigned for the party. 48

examiners may attend and inſpect, and the penalty on a fraud. *ibid.*

Depoſitions, *&c.* 48 *to* 55

See *Evidence* in this *Vol.* and *Vol.* 1.

Diſclaimer and anſwer. 383

Diſmiſſion, what, and the law relating to diſmiſſions. 91 *to* 98

[See *Diſmiſſion*, *Vol.* 1.]

E.

OF *Elections.* 92, 93

Examiner, his office. 32

Exceptions. See *Vol.* 1.

Execution of decrees, how ſerved. 111

if for land. 112

if for money. *ibid.*

if to produce deeds, *&c.* 113

words of courſe in a writ of execution. 114

the writ. 116

writ of aſſiſtance. 415

Exemplification of decrees. 116 *to* 119

the docquet. 117

the certificate. *ibid.*

the inrolment. *ibid.*

of a bill, *dedimus*, anſwer, replication, *&c.* 118, 119

Evidence, witneſſes may uſe ſhort notes. 29

witneſſes examined part in town, and by commiſſion. 32

Evidence, examiner his office. *Page* 32
—— in what caſe committed. *ibid.*
examining witneſſes in the office, and how if they refuſe to be examined. 33, 34
—— witneſſes examined by commiſſion, not to be examined again without order. 35
—— of examining *de bene eſſe*, and eſtabliſhing their teſtimony *in perpetuam*, *&c.* 35 *to* 40
—— where party intereſted may be a witneſs. 40
—— where a bankrupt may, *&c.* *ibid.* 41
—— where a legatee. 40
—— one diſintereſted when examined, and afterwards becomes intereſted, good witneſs. *ibid.*
—— releaſe to deſtroy intereſt, to be proved. *ibid.*
—— plaintiffs cannot be examined for each other, but defendants may. *ibid.*
—— commiſſioner may be examined before other witneſſes are. *ibid.*
—— an arbitrator may. *ibid.*
—— member of corporation cannot. *ibid.*
—— not wife againſt huſband unleſs, *&c.* *ibid.*
—— plaintiff to obtain an order to examine defendant. 41
—— bill in another cauſe not to be read. *ibid.*
—— when and how depoſitions may be read. 42
—— anſwer in ſpiritual court read by order. *ibid.*
—— truſtees defendants may give evidence. 42
—— one defendant's anſwer no evidence, *&c.* *ibid.*
—— when copies of notices evidence. *ibid.*
—— copy of deed inrolled admitted as evidence. *ibid.*
—— matter confeſſed by anſwer evidence. *ibid.*

Evidence, marriage ſettlement in what caſe evidence. *Page* 42
——— where purchaſer is not obliged to prove payment. 42
——— when an injured party's oath good. 43
——— one witneſs againſt defendant's anſwer not good. 43
——— oath of the party good evidence. 43
——— where anſwer to be taken intire, *&c.* *ibid.*
——— in what caſe *parol* evidence to ſhew teſtator's intention was not admitted. 44
——— where admitted to explain an implication in a will, *&c.* *ibid.*
——— where teſtator gives inſtructions for will, and dies before executed. *ibid.*
——— *parol* evidence allowed to prove promiſe of an annuity. 44
——— *parol* evidence in what caſe always admitted. *ibid.*
——— where one purchaſes in the name of *B.* *A.* good witneſs, *&c.* 45
——— *parol* evidence good to prove a ſurrender againſt entry on roll. *ibid.*
——— witneſs examined thrice, depoſition ſuppreſſed. *ibid.*
——— where witneſſes may be examined on new interrogatories after depoſitions ſuppreſſed. 45
——— witneſſes may be examined after publication. 46
——— qualification of witneſſes. 46
——— uſual courſe as to evidence on hearing. 47
——— exhibits proved to be ſhewn at hearing. 48
——— depoſitions taken in *Ireland*, good evidence here. *ibid.*
——— depoſitions of a ſick perſon, or one beyond ſea, may be read after order. 49

Evidence, croſs examining a witneſs makes him a good witneſs to the other ſide. *Page* 49
——— a defendant's depoſitions concluſive. 50
——— a witneſs examined on an account, examined on the other ſide. *ibid.*
——— what the court will do where a witneſs contradicts himſelf. *ibid.*
——— depoſitions in croſs cauſes may be uſed. *ibid.*
——— letters or notes not proved ſhall be uſed, but records may be proved *viva voce*. *ibid.*
——— where depoſitions in a former cauſe may, and may not be uſed. *ibid.*
——— motion for time to examine what muſt be done. *ibid.*
——— how to examine defendant. *ibid.*
——— if huſband and wife contradict, depoſitions to be ſuppreſſed. 51
——— ſhop-books and depoſitions of the admiralty read at the hearing. *ibid.*
——— a man's books evidence againſt him, but not for him. *ibid.*
——— pariſh books no evidence. *ibid.*
——— truſtees not to be examined one againſt another. *ibid.*
——— counſel, *&c.* in what caſe he cannot be examined. *ibid.*
——— witneſſes examined *in Scaccario* not to be re-examined. *ibid.*
——— where a witneſs refuſes to be croſs-examined, *&c.* the court will ſuppreſs his *ex parte* depoſition. 52
——— no exceptions to witneſs after publication. 52
——— witneſs cannot demur to queſtions. *ibid.*
——— one witneſs againſt defendant's oath not ſufficient for a decree, *&c.* *ibid.*
——— none intereſted can be a witneſs. 52

Evidence, where a miſtake is in the title of depoſitions, they can't be read. *Page* 52
——— one plaintiff cannot be examined for another, but a defendant may. *ibid.*
——— depoſitions read on hearing, not to be read on appeal to the Lords. 53
——— a witneſs dying before ſigning his examination, his depoſitions cannot be read. 53
——— depoſitions amended after publication. *ibid.*
——— where a pariſhioner is not a good witneſs. *ibid.*
——— but a lodger is. *ibid.*
——— witneſs's teſtimony rejected. *ibid.*
——— man and his wife but one witneſs. *ibid.*
——— a man outlawed no witneſs. *ibid.*
——— copies of depoſitions not to be recorded, *&c.* *ibid.*
——— where the wife may be evidence againſt her huſband. *ibid.*
——— truſtee examined as a witneſs and made defendant, his depoſition not allowed. *ibid.*
——— when publication paſt, either may examine to credit of witneſſes, and how to proceed. 54
——— if both parties examine a witneſs, neither can object againſt reading him. 54
——— ſolicitor ſerved with *Subpœna* to teſtify diſcharged. 54
——— where depoſitions may be explained, but not contradicted by new proof. 54
——— the king's certificate allowed as evidence. *ibid.*
——— alſo an inquiſition *poſt mortem*. *ibid.*
——— a ſurvey taken by commiſſioners appointed by the commons *tempore uſurpationis* allowed as evidence. 55

F.

FEES belonging to the ſeveral officers in Chancery. *Page* 61 *to* 70

H.

HEARING cauſes. 80 *to* 83
[See *Hearings*, *Vol.* 1.]

I.

INTERROGATORIES, what, and reading thereon. 1 *to* 6
if leading, depoſitions to be ſuppreſſed. 45
new ones ſettled by the maſter. *ibid.*
exhibiting interrogatories in the office. 46
for proof of a will. 417
to prove a deed and bond, and other matters relating to an eſtate in poſſeſſion of defendant. 419
on behalf of a defendant for proving the execution of bonds and money lent upon ſecurities. 421
to examine creditors. 424
for plaintiff's examination purſuant to a decree, *&c.* 427
See *Interrogatories*, *Vol.* 1. and *Commiſſion.*

L.

LUNATICK, what. 428
the foundation of finding one a lunatick. *ibid.*

Lunatick, how to procure commiſſion. *Page* 428
the affidavit. 429
the petition. 430
naming commiſſioners, and ſuing out commiſſion. *ibid.* 431
precept to a ſheriff. 431
warrant to produce the lunatick. 432
how to be ſerved. 433
how to enforce the producing of a lunatick. *ibid.*
Subpœna for witneſſes. *ibid.*
how to be ſerved. 434
how to proceed upon commiſſion. *ibid.*
inquiſition. 435
how to be drawn, wrote and ſigned. 436
how to be engroſſed, ſigned and ſealed. *ibid.*
filing the ſame. 437
how to apply for the cuſtody. *ibid.*
petition for the cuſtody. 438
of lodging petition and procuring commitment. 439
of entring caveat, and inſiſting upon inſpection. *ibid.*
the wife committed for not producing lunatick. 440
where the lunatick recovers his underſtanding, and wants to make a ſettlement of his eſtate, what *cur'* will do. 440
commitment of the perſon to next of kin. *ibid.*
where a lunatick's eſtate was granted to baron and feme, ſhe being next of kin, the wife dies, the huſband's right is determined. 441
a committee may requeſt an allowance for the children of the lunatick. *ibid.*
where a committee inveſts perſonal eſtate in the purchaſe of lands, how taken. *ibid.*

Lunatick, actions touching the lunatick's lands muſt be brought in his own name. *Page* 441
a bill will not lie to perpetuate teſtimony of witneſſes to his will made before his lunacy. *ibid.*
no prohibition againſt probate of a will on ſuggeſtion of *Non compos.* *ibid.*
not to be looked upon as deſperate, *&c.* *ibid.*
laches cannot be imputed to him. *ibid.*
where anſwerable *& econt.* *ibid.*
See *Lunatick*, *Vol.* 1.

N.

NOTICE of execution of a commiſſion by clerk in court. 24
——— by commiſſioners. 25

O.

OFFICERS of this court, and their fees. 56 *to* 70
Parol Evidence. Vide *Evidence.*

P.

PEERS to give their teſtimony upon oath before commiſſioners to examine witneſſes, as well as others. 23
Petition for a commiſſion of lunacy. 438
See *Petitions*, *Vol.* 1.
Plea of a former ſuit depending for ſame matter. 383

Plea of the ſtatute of limitations in bar of an account. *Page* 386
——— in bar of a verbal agreement. 388
——— of the *ſtat.* 29 *Car.* 2. in bar to a pretended agreement, and alſo a miſnomer. 390
——— of the ſtatute of limitations in bar of an account. 394
——— of outlawry. 396
——— to a bill exhibited by a feme covert in her own name. 397
——— demurrer, plea and anſwer to a bill ſeeking relief againſt a will, whereby a perſonal eſtate is deviſed, being proved in the eccleſiaſtical court, and the will pleaded in bar, and for want of equity. 407
——— diſmiſſion upon interlocutory orders not pleadable. 93
Publication, what. 71
——— of paſſing publication, *&c.* *ibid.* 72
——— enlarging publication. 72 *to* 75
[See *Rules.*]
[See *Publication*, *Vol.* 1.]
Prohibition, not granted againſt probate of a will on ſuggeſtion of *Non compos.* 441

R.

REHEARINGS and appeals to Lord Chancellor, *&c.* 83 *to* 91
the form of a petition of appeal to the Lord Chancellor. 87
Reviewing and reverſing decrees, what. 123
who can bring a bill of review. *ibid.*
how to be drawn and exhibited, and what ſum to be paid thereon. *ibid.* 124
no witneſs, which was or might have been examined before, to be examined, *&c.* on a bill of review. *ibid.*

Reviewing

Reviewing, what errors to be aſſigned, and how they muſt appear. *Page* 124
if a decree is againſt a ſtatute, or error in matter of law, it may be reviewed and reverſed. *ibid.*
but cannot for a matter of fact unleſs the Chancellor errs in his conſcience. *ibid.* 125
ground for bill of review. *ibid.*
this bill lies where a decree is in the nature of things impoſſible or repugnant. 125 *to* 128
where ſtay of execution will be ordered on this bill. 126
cauſe for review muſt appear as ſtated in the decree. *ibid.*
where a demurrer allowed on this bill. 127
no new bill of review, where demurrer to the firſt allowed. *ibid.*
no bill of review of a bill of review. *ibid.*
where demurrer to this bill may be inrolled, and where not. *ibid.*
of bills in nature of bills of review. *ibid.*
See *Bills* this *Vol.* and *Vol.* 1.
Reviving decrees, where neceſſary. 119
where a decree inrolled, and ſuit abates by death or marriage, muſt revive by *ſubpœna ſcire facias*, or bill. 120
where decree not inrolled, muſt be revived by bill. *ibid.*
in what caſe the party may elect either by *ſubpœna ſcire facias* or by bill. *ibid.*
by parties in privity of blood, *&c.* 120
where an heir claims by title paramount. *ibid.*
where under his anceſtors. *ibid.*
adminiſtrator *de bonis non* may revive. 121

Reviving decrees, where may revive by bill, and not *ſubpœna ſcire facias*. *Page* 122
how this *ſubpœna* is obtained. *ibid.*
where may revive original bill. *ibid.*
on an original in nature of a bill of revivor, deviſee to have what advantage. *ibid.*
this bill lies not upon a decree of a long ſtanding. *ibid.*
where part of matter decreed was omitted, and defendant dead, this bill is to be brought. *ibid.*
where this bill will lie for coſts, *&c.* 122
cannot revive before decree ſigned and inrolled. *ibid.*
See *Bill of revivor*, and *Abatement*, *Vol.* 1.
Rules, how to be given, the form and entry thereof. 74

S.

SETTING down cauſes, how and when, and with whom, *&c.* 76 *to* 79
ſubpœna to hear judgment, when to be ſerved, and how. 77
where defendant is ſerved with a *ſubpœna* to hear judgment, and plaintiff does not proceed. 78
where the cauſe is ſet down at defendant's requeſt. 78
where parties pray a further day, and where defendant does not proceed, what coſts. 78
affidavit of ſerving *ſubpœna* to hear judgment, when and how to be filed. *ibid.* 79
the form of ſuch affidavit. *ibid.*
Subpœna ad teſtificandum, notes relating thereto. 26

Subpœna to hear judgment. See *Setting down cauſes.*

Summons for witneſſes to appear before commiſſioners. *Page* 26

W.

WRIT *of aſſiſtance.* 415

Witneſſes ſwearing reflecting words not to pay coſts and why. 23

[For more relating to witneſſes. Vide *Evidence.*]

E. G. M. B.

FINIS.